Dare
WE BE
FREE?

The Meaning of the Attempt to Outlaw the Communist Party

by HERBERT APTHEKER

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To Outlaw the Communist Party

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Each decision was rendered by a Court split 5 to 4; in each case the dissents were severe and substantial. Since the decisions had the slimmest possible majorities, and since the dissents were so vigorous and profound, it is clear that the gravest "reasonable doubt" persists as to the correctness of the decisions. Where an individual's freedom is involved, it is standard procedure to disallow conviction if a "reasonable doubt" remains; shall more precipitate action and contrary conduct be pursued where the nation's freedom is involved?

Not only is it clear that reasonable doubt persists as to the constitutionality of the laws; even more important for the people of the United States—if not for the Justices of the Supreme Court—is the question of the wisdom of the laws. The Court itself—and this is especially true of Mr. Justice Frankfurter, who wrote the majority opinion in the McCarran Act case—insists that when it passes on the constitutionality of a law, or a part thereof, it must carefully avoid any consideration as to the rightfulness or the wisdom of the statute. Whatever doubts ordinary mortals may have as

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to how successful judges may be in separating these considerations in their own minds—constitutionality from desirability—such mortals, who constitute the People and therefore the ultimate locale of political power in the American system of government, always must consider in the first place exactly that feature of laws which the Court affirms it may not inquire into, namely, their wisdom.

Having both considerations in mind, let us bring forward the opinions of outstanding authorities in political science and constitutional law on the Smith and McCarran Acts. Both laws were products of war-time: the Smith Act passed in 1940, during the "phoney war" phase of World War II; the McCarran Act passed in September, 1950, just after the beginning of the Korean War. Both quite properly bear the names of leaders of the extreme Right in Congress, the first that of a Virginia Representative notorious for his anti-labor and racist views, the second that of a Nevada Senator who was the closest facsimile of Senator McCarthy that the Democratic Party had.

The late Zechariah Chafee, Jr.—a member of Harvard's law faculty from 1916 until his death forty years later, and universally acknowledged as the outstanding authority on the law of civil rights and liberties—noted that what became known as the Smith Act was originally officially entitled The Alien Registration Act. The title of this law read: "A bill to make unlawful attempts to interfere with the discipline of the Army, the Navy, and the Coast Guard; to require the deportation of certain classes of aliens; to require the fingerprinting of aliens seeking to enter the United States; and for other purposes." It was the "other purposes" which constituted the "anti-sedition" portions of the law; it was under these portions that, a decade later, the Government began its prosecutions of Communist leaders. From the viewpoint of use, it is these sections, constituting the "other purposes," which have made up the important features of the Smith Act. Professor Chafee wrote that though his main preoccupation was exactly civil liberties, still, "Not until months later did I for one realize that the statute *contains the most drastic restrictions on freedom of speech ever enacted in the United States during peace.*"

Since the passing of Professor Chafee, no individual has achieved

the absolute pre-eminence in the area of civil-liberties history and theory which he held; certainly, however, among the university people functioning today whose authority in this field is indubitable is Henry H. Wilson, Professor at Princeton University. Of the McCarran Act, Professor Wilson wrote that it "is surely one of the worst pieces of legislation affecting the Bill of Rights ever enacted in America." President Truman, in vetoing the measure in September, 1950—the bill became law over his veto—characterized it in language so severe as to be quite unprecedented in the history of Presidential vetoes. He thought its provisions were "not merely ineffective and unworkable"; "they represent," added the President, "a clear and present danger to our institutions." Any attempt at their enforcement, he went on, "would betray our finest traditions" and "would make a mockery of the Bill of Rights." Enactment and attempted enforcement of the McCarran Act, said President Truman, would "throw away the ideals which are the fundamental basis of our free society." He returned to the "mockery" characterization, in the closing words of the Veto Message: "I can think of no better way to make mockery . . . of the deep American belief in human freedom and dignity . . . than to put the provisions [of the McCarran Act] on our statute books."

It is portions of these two laws whose constitutionality was upheld by a 5 to 4 vote in the decisions of June 5, 1961. This may prepare the reader for the unprecedented severity with which these majority decisions were attacked by several members of the Supreme Court. Justice Black stated that confirming the six-year jail sentence in the *Scales* case, involving the membership clause of the Smith Act, represented "a *direct* abridgment of his [the defendant's] freedoms of speech and assembly—under any definition that has ever been used for that term," and the italicizing was his own. On the basis of the majority's action in that case, continued Justice Black, one may "justify almost any action Government may wish to take to suppress the First Amendment freedoms."

Justice Douglas, commenting on the same case, stated that the verdict "made a sharp break with traditional concepts of First Amendment rights." "Nothing but beliefs are on trial in this case," he continued; by finding as the Court does, "We legalize to-

day guilt by association, sending a man to prison when he committed no unlawful act. Today's break with tradition is a serious one."

Justice Black, in his passionate dissent in the McCarran Act case, said that the law itself "not only is a legislative bill of attainder but also violates due process by shortcutting practically all of the Bill of Rights." The law and the decision in the instant case, he wrote, "embark us upon a policy of repression by the outlawry of minority parties because they advocate radical changes in the structure of Government"; but the stability of the social order "can better be served by depending upon the affection of the people than by attempting to instill them with fear and dread of the power of the Government."

* * *

The Smith and McCarran Acts deal with Marxism-Leninism, with political activities in the United States going back decades, with evaluations of the government and the society of the Soviet Union, with estimates concerning international relations since before World War II. Just on the face of it, therefore, the matters dealt with in these laws range over the widest philosophical and scientific and ethical questions, as well as much of the history of our own country and of a large part of the world for the past generation and more. From this point of view alone, the laws are anachronistic, and to bring prosecutions under them into courts is medieval—or fascistic.

Defendants under these laws stand charged with everything except *acts*. They stand charged with their whole outlook, all their moral values; defendants under these laws are defending their ideas, their dreams, their hopes, their most fervent commitments. Such matters do not belong in a court-room; one of the great hallmarks of human progress since the Middle Ages lay precisely in removing such matters from the ken of lawmakers and the adjudication of courts.

How shall people who have spent their lives studying and think-

ing about the whole sweep of Marxism-Leninism "explain" and "defend" this to an "Anti-Subversive" Board of political appointees? How shall people be "tried" for a million "mystic chords" that bind them to Bunker Hill and the Battle of the Bulge? It is absurd enough to be tried for one's ideas, but in the cases and hearings arising under the Smith and the McCarran Acts, men and women have been tried and examined not so much on what their ideas were, but rather on what their ideas "must have been," given the interpretation of printed versions of such ideas as rendered by *others,* speaking for the government—and in the employ of the government! Even this is not all; basically, what have been tried or inquired into—via the interpretations offered by government witnesses—are the *intentions* of defendants as determined on the basis of ideas they are charged with holding—and this despite the fact that the defendants deny both holding such ideas and possessing such intentions!

And to cap it all there was this: whenever the printed versions of the "dangerous ideas" or the published words of the defendants themselves seemed clearly to contradict the meanings derived from them by the government witnesses, the very contradictions were held to affirm guilt, on the theory that deception (sometimes called by the name "Aesopianism") characterized the defendants' behavior.

"Impossible" though it be, the Government of the United States has made ideas and intentions and associations triable in courts and dependent upon the "recollections" of embittered and subsidized renegades and government-hired informers (planted within the suspect organization and paid for producing evidence confirming the suspicions). To prove that these ideas and intentions and associations are what the government says they are, juries and boards and courts are presented with the snippings and cuttings made by hirelings and political illiterates from books and pamphlets written twenty, forty, sixty, one hundred years ago, in some other land, under other conditions, for this or that purpose. From these snippings and cuttings fall out, drop by drop, like one's heart-blood, the words and phrases that are to make prison cells for men and women—and a whole nation.

Let us consider now the cases involving the Smith Act membership clause and the McCarran Act registration clause. We shall base ourselves in large part upon the majority and minority opinions. The Smith Act membership cases were dealt with first by the Court, and to these we turn.

CHAPTER II

The Smith Act Cases and the Deadly Pencil

IN THE SMITH ACT membership case involving Junius Scales—at one time Communist Party organizer for the States of North and South Carolina—the Court, by a vote of 5 to 4, upheld his conviction and his sentence to six years in prison. The majority decision was written by Justice Harlan.

Justice Harlan held that for conviction to stand in such a case two elements required proof: 1) that the Party "advocated the violent overthrow of the Government in the sense of present 'advocacy of action' to accomplish that end as soon as circumstances were propitious"; and 2) that the defendant be an "active" member, that is to say, one who knew of the Party's purposes as indicated in (1) above and who, in so knowing and in being a member, devoted a substantial portion of his time and efforts to advancing the aforementioned nefarious ends.

Justice Harlan affirmed that in the *Dennis* case—the first Smith Act prosecution of Communists, under the conspiracy section rather than the membership section—"it was settled . . . that the advocacy with which we are here concerned is not constitutionally protected speech." That is, Justice Harlan rejects not only the unambiguous prohibition against Congressional enactment of any law in the area of speech, press, and assemblage, but he also rejects the "clear and present danger" limitation to that prohibition originally made by Holmes and Brandeis in a dissenting opinion in 1919. This Holmes-

Brandeis dictum had become majority opinion by the New Deal period and was reaffirmed by the Court in the period of World War II, particularly and specifically in several cases involving questions of so-called sedition, and of Communism. The first rejection of the "clear and present danger" rule was pronounced by Chief Justice Vinson in the *Dennis* case; that cold-war ruling removed the question of immediacy or emergency-nature danger to the State, and substituted for it alleged advocacy of forcible overthrow to occur in a nebulous future, *i.e.,* when circumstances might be "propitious."

Under that ruling, conviction required nothing more than the evidence the Government then had, which consisted of government-"expert" rendering of the theory of Marxism-Leninism as meaning simply and purely and substantially the idea of overthrowing governments, including the government of the United States, by force and violence. Equating Marxism-Leninism with advocacy of forcible overthrow of the U.S. government automatically convicted anyone prominently associating with any organization which affirmed its adherence to the ideas of Marxism-Leninism; defendants' efforts to deny such equation were variously described as "self-serving," deceitful or "Aesopian."

This interpretation endured through and helped bulwark the worst period of McCarthyism; as that period receded and some improvement in the atmosphere appeared, prosecution under the Smith Act conspiracy clause became more and more onerous and time-consuming for the Government. A sharp blow was rendered the whole anti-"subversion" drive with the *Yates* decision, involving California defendants in a Smith Act case. Here the Court's opinion reversed the convictions of several defendants and directed a re-trial of the remaining defendants because the Government had failed to show specific advocacy or incitement by any of the defendants themselves or of the Party itself. This ruling did not revert to the "clear and present danger" concept, for imminence still did not have to be shown; but the ruling did require some kind of specificity, some element of incitement and some pattern of such advocacy as an organizational attribute.

The Government itself, in this case, chose not to re-try those

defendants the Supreme Court had not directly freed. Clearly, this failure reflected the Government's belief that its evidence did not include such particular advocacy or any element of incitement and did not show a pattern of advocacy or incitement. Almost explicit in the *Yates* decision was the Court's instruction to the Government that its informers in the future would have to produce evidence of particular advocacy and particular incitement. The advocacy still could project the need of violence in some undetermined future; but some specific advocacy was needed and the more of this the better.

Justice Harlan, speaking for the Court in the *Scales* case, found the record to contain such evidence of advocacy in sufficient quantity and with the requisite quality. He specifically found that the record in the *Scales* case "contains no evidence of advocacy for immediate overthrow," but he held this was not fatal to the Government's case, for all that was required—given the *Dennis* decision—was *present* advocacy for *future* action. He remarked also that "the credibility of the witnesses" produced by the Government, "is not for us"—that is, is not subject to consideration by the Supreme Court; Justice Harlan found only that, assuming the credibility, its substance did cover the vital requirement of specific advocacy.

In the *Scales* case, Justice Harlan found most important testimony of the following nature: "One member was surreptitiously indoctrinated in methods of moving masses of people in time of crisis." Moving them where and exactly how is not indicated; and how the concern for "masses of people" shows an anti-democratic bias—which is one of the main theses of the Government insofar as Marxism-Leninism is concerned—also is not indicated. Furthermore, "others were told to adopt such Russian prerevolutionary techniques as the development of a special communication system through a newspaper similar to *Pravda*." If one calls a newspaper "a special communication system," and if one makes a newspaper a "Russian prerevolutionary technique" he can send someone to prison for six years; imagine if one had established such an American prerevolutionary technique as Committees of Correspondence —presumably this would have merited lifetime confinement!

Another piece of evidence was the alleged statement of an un-

named instructor at a school said to have been conducted by the Party: "When the time is ripe we could stampede them ["the people"] against the capitalist system." Another instructor in another school said, according to the Government's witness, that "he could see himself carrying a gun against the capitalist S.O.B.'s and explained to the class it was all based on the science of Marx and Lenin." The accuracy of this teacher was matched only by his inspirational character; obviously such instruction imperiled the stability of the U.S. Government.

None of these witnesses, however, mentioned the defendant; their testimony was important only in showing a "pattern" of the advocacy of violence by the organization of which the defendant was a member. But the testimony of witnesses Childs and Clontz was "of special importance," said Justice Harlan; this was because both of them directly implicated the defendant. Both were Government agents, the Justice gingerly and hastily notes; both were students, Clontz at Duke University Law School and Childs at the University of North Carolina.

Justice Harlan tells us that Clontz, while working for the F.B.I., "contacted" the defendant—by sending him a post-card at an address of the Party as given in the telephone book. Through this remarkably imaginative and laborious method of surreptitious probing, Clontz was first sent, through the mails, some pamphlets containing the Party's views on various political questions, and then invited to the defendant's home. On the second meeting with the defendant, he—this Party organizer and secret conspirator—confided in Clontz that "a forceful revolution would be necessary." The defendant also said to him at this time—his haste at imparting all the dire secrets was remarkable—that "if the United States declared war on the Communists in their revolution [whatever that means—I'm only quoting the record as quoted by Justice Harlan] then the Soviet Union would land troops [where and how are a little vague] and he said that would be a bloody time for all."

The informer Clontz also testified that soon after contacting an official of a Party school in New York City, that remarkably careless conspirator "told all" to fearless Ralph, explaining not only that, of course, the Party favored the forcible overthrow of the

U.S. Government, but even revealing what amounted to cryptic formulae used in order to convey this dread news to "real insiders." Clontz' testimony reminded one of nothing so much as the testimony of Titus Oates, the "revealer" of Roman Catholic subversion in 17th century England. As his biographer, Jane Lane, writes of him: "It was a most extraordinary thing, but no sooner did this young parson [Titus Oates] come into contact with Papists, than they rushed to tell him their horrid secrets."

Childs' testimony, as summarized and quoted by Justice Harlan, touches on the use of violence in two particulars, in one of which the defendant was indirectly involved, while in the other he was in no way involved. As for the latter case: the informer reported that he had been assigned to act as a "bodyguard" for a visiting official of the Civil Rights Congress—this was the Negro leader William L. Patterson, although Justice Harlan does not say so—who had come to speak at the University of North Carolina. In the course of his speech, swore Childs—and he swore that he took down Mr. Patterson's "exact words"—the Negro civil rights leader said: "They say that the nigger is yellow. Yellow, give the niggers in North Carolina and Georgia rifles and tell them to fight for their rights. Yellow, man, you will see fighting like you have never seen before." These are the "exact words" of William L. Patterson, and this is quoted as especially significant in a decision by the United States Supreme Court! It is of course patently clear and absolutely certain that such vulgar, chauvinist, and irresponsibly adventuristic and provocative words never could come into the brain of William L. Patterson, much less be publicly uttered by him in a speech at a Southern university.

The other piece of evidence that Justice Harlan found of "special importance" concerned a Party school. Here, swore Childs, an instructor in the presence of the defendant and others stated during a recreation intermission that it was possible to kill a person with a sharpened pencil. Childs swore that this instructor demonstrated the correct way to hold the lethal pencil and the correct spot in which to insert it for the desired results. The present writer was in the court-room at the moment this testimony was given. He can assure the reader that the spectators greeted it with the

hilarity it deserved. Yet here it is treated with the utmost seriousness by the United States Supreme Court as one of the really substantial pieces of evidence that the Department of Justice was able to discover; as a piece of evidence vital to sending a man to jail for six years; as a piece of evidence on the basis of which the Court was to render a decision which another Justice of that Court characterized as making "a sharp break with traditional concepts of First Amendment rights." Sharpened pencils are threatening the stability of the United States Government!

In the paragraphs above, *all* the evidence cited by Justice Harlan as demonstrating the defendant's guilt as a member of an organization dedicated to the violent overthrow of the U.S. Government at some propitious time in the future has been summarized. This, he held, gave the necessary particularity and advocacy to remove the difficulty noted in the *Yates* case!

Before turning to the points made by the dissenting judges in this case, some features of the Scales trial not mentioned by any of the Justices may be elucidated. Clontz joined the Party as an F.B.I. agent; that is to say, he was never a member of the Party, but was rather a government spy sent into the Party with the express purpose of gathering "evidence" hostile to it for use in future legal prosecutions. For his services he was paid by the F.B.I.; in fact, this employment became so important to him that he was soon working at it full-time, and "earning" $450 per month thereby.

In Clontz' testimony there was one point that could be controverted by a defense witness other than the defendant, and this represented a serious embarrassment for the Government. Clontz swore that the defendant had told him to visit Professor Douglas B. Maggs of the Duke University Law School—a man with a statewide reputation as an outstanding liberal (the testimony may have been a smearing attempt by the prosecution)—and ask the professor if he would defend Scales should the latter be arrested under the Smith Act. Clontz further swore that Professor Maggs had told Clontz to tell Scales that he would defend him. Professor Maggs, subpoenaed by the defense, swore that he had never discussed Scales with Clontz, that he had never been asked at any time by anyone to defend Scales, and that he had never given any

message of any kind to Clontz. The prosecution tried some baiting cross-examination of the professor, but coming out second best every time, dropped its questioning. Everyone in the court-room knew that Clontz had lied and the record must show that fact, but Justice Harlan chose to ignore it, as he chose to ignore the statements of Scales and of his witnesses.

The other witness held to be "of special importance" by Justice Harlan was one Childs. At the time he testified against Scales, Childs was 24 years old; he testified that he had been an informer for the F.B.I. since he was 18 years of age. From his testimony it was brought out that his status as an informer had won him deferment from the draft; he admitted also that for the three years preceding his appearance on the witness stand he had been able to attend the University of North Carolina on the basis of the fact that the Department of Justice had been giving him each month a check for $100, and had been paying all his expenses.

It may be added that when Childs and Clontz were forced, during cross-examination, to testify as to what they *did* in the Party, it turned out that they helped expose the Ku Klux Klan, worked to help elect Negro office-holders in North Carolina, and sought to build unions in the state and to increase wages there. But nothing could stand up to Childs' sharpened pencil—and the Government's built-in verdict of guilty.

Of the dissenting justices all, except the Chief Justice, chose to file opinions in this case. A summary of these dissents may convey further the extreme shoddiness of the Government's case and the tenuousness of the majority's opinion. Justice Black commenced his dissent by observing that the Harlan decision was based on a rewriting of the statute in question. That statute had made membership in the Party criminal; Justice Harlan had changed this to read "active membership" and had then proceeded to give his own definition to his amendment. Said Justice Black:

> It seems clear to me that neither petitioner nor anyone else could ever have guessed that this law would be held to mean what this Court now holds it to mean. For that reason, it appears that petitioner has been convicted under a law that

> is, at best, unconstitutionally vague and, at worst, *ex post facto.*

Justice Harlan, in rewriting the law, attempted to justify this action by affirming that he was narrowing the law, rather than widening it, as though this granted the defendant some special consideration. Actually, of course, the narrowing of the law to make it read "active membership" was necessary in view of the Court's action that same day of upholding the constitutionality of the registration clause of the McCarran Act. For if mere membership was a crime—as the language of the Smith Act states—then to require registration of all members of the Party—as was done in the McCarran Act case—would so clearly and palpably violate the self-incrimination provisions of the Fifth Amendment that the McCarran Act could not possibly have been upheld.

In fact, it was only through the act of "narrowing" that Justice Harlan could uphold Scales' conviction; if the Act had not been narrowed, the Court would clearly have been forced to find the membership section of the Smith Act to have been repealed by the provision of the McCarran Act, passed ten years after the Smith Act, which specifically voided any prior law making criminal any activities there requiring registration.

Justice Black added another consideration on the "narrowing" argument offered by Harlan. He wrote:

> The fact that the Court's rewriting of the statute has, in this case, narrowed the statute rather than broadened it does not change this conclusion. Petitioner has a right to have the constitutionality of the statute considered on the basis upon which it was originally written, for that was the condition of the statute when he violated it.

Obviously, if judicial rewriting of a statute saves the Government from the embarrassment of the Court's finding legislation to be unconstitutional, it simultaneously subverts the American form of government, in that it adds a third House to the legislature and spares the Court the duty of passing on the constitutionality of legislation, as originally written.

The main theoretical motivation in upholding the Smith Act was the "balance" theory, whose foremost defender is Justice Frankfurter. This theory holds that one must interpret the Bill of Rights not in any absolute sense but in an altogether "relative" sense—to quote the late Chief Justice Vinson—and that the rights guaranteed to individuals in the first Ten Amendments must give way to the needs of the government as a whole whenever the two appear to be in conflict. The function of the Court, in this view, is to weigh the balance, being careful always to give the government, and not the individual and not the Bill of Rights, the benefit of the doubt in every case. Here the inviolability of the Bill of Rights on the basis of the idea that a just government exists exactly in order to protect those rights—an idea expressed, for instance, in the Declaration of Independence—goes by the board, for the freedoms in the Bill of Rights are treated as luxury items, easily expendable in times of emergency, or under conditions and for reasons found to be impelling by the legislature at any particular time.*

To this fundamental question, Justice Black addresses himself in a notable paragraph in his dissent in the *Scales* case:

> This [case], I think, demonstrates the unlimited breadth and danger of the "balancing test" as it is currently being applied by a majority of this Court. Under that "test," the question in every case in which a First Amendment right is asserted is not whether there has been an abridgment of that right, not whether the abridgment of that right was intentional on the part of the Government, and not whether there is another way in which the Government could accomplish a lawful aim without an invasion of the constitutionally guaranteed rights of the people. It is, rather, simply whether the Government has an interest in abridging the right involved and, if so, whether that interest is of sufficient impor-

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* There is a very thoughtful examination of this question in the recent article by Professor Peter Bachrach of Bryn Mawr College: "The Supreme Court, Civil Liberties and the Balance of Interest Doctrine," in *The Western Political Quarterly,* June, 1961, XIV, pp. 391-399.

tance, in the opinion of a majority of this Court, to justify the Government's action in doing so. This doctrine, to say the very least, is capable of being used to justify almost any action Government may wish to take to suppress First Amendment freedoms.

* * *

Justice Douglas' dissent in this case is as sharp as Black's. He says that in finding for the Government, the Court has made "serious Mark Twain's light-hearted comment that 'It is by the goodness of God that in our country we have those three unspeakably precious things: freedom of speech, freedom of conscience, and the prudence never to practice either of them.'"

Justice Douglas makes crystal clear that in this case: "There is no charge of conspiracy, no charge of any overt act to overthrow the Government by force and violence, no charge of any other criminal act." Solemnly, the Justice adds: "We legalize today guilt by association, sending a man to prison when he committed no unlawful act." The fact that the defendant was shown to be an active member of the Communist Party does not save the case, because, "None of the activity constitutes a crime."

The fact is, continues Justice Douglas, that "Not a single illegal act is charged to the petitioner." What one has here is a "crime of belief," and that, as Justice Douglas points out, is a throwback to medieval law. He reiterates: "Nothing but beliefs are on trial in this case," and he warns: "*We as a free people should not venture again into the field of prosecuting beliefs.*" (Italics added.)

Justice Douglas joins Justice Black, in his dissent in the *Scales* case, in attacking the "balance" theory of the Bill of Rights. "We have too often been 'balancing' the right of speech and association against other values in society to see if we, the judges, feel that a particular need is more important than those guaranteed by the Bill of Rights."

This, Justice Douglas holds, is contrary both to wisdom and to constitutionality. To bulwark both objections he reminds the Court that James Madison—who as a Representative in the First

Congress steered through the Legislature what became the First Ten Amendments—held the values in that Bill to be priceless and considered the prohibitions against legislative violation of them to be absolute. Madison further was of the opinion that the greatest and most characteristic function of the Supreme Court would be exactly the preservation of those freedoms inviolate from all assaults and especially from legislative presumption.

Substantiating these views Justice Douglas brings to the Court the findings of Madison's definitive biographer, Irving Brant, who, writing on "The Madison Heritage," in the *New York University Law Review* (vol. 35), stated:

> When Madison wrote, "Congress shall make no law," infringing these rights, he did not expect the Supreme Court to decide, on balance, whether Congress could or could not make a law infringing them. It was true, he observed in presenting his proposals, that state legislative bodies had violated many of the most valuable articles in bills of rights. But that furnished no basis for judging the effectiveness of the proposed amendments.

In the debate on the proposed Bill of Rights, in the First Congress, Madison himself had specifically argued:

> If they are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; *they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive;* they will be naturally led *to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights.* (Italics added.)

Having in mind the 5 to 4 vote by which the Court upheld the Government in this case, Douglas closed his dissent with these two paragraphs:

> "The most indifferent arguments," Bismarck said, "are good when one has a majority of bayonets." That is also true when one has the votes.

> What we lose by majority vote today may be reclaimed at a future time when the fear of advocacy, dissent, and nonconformity no longer casts a shadow over us.

One may add that in the original Smith Act anti-Communist case, upon which the Supreme Court rendered its verdict on June 4, 1951—ten years earlier almost to the day—the vote stood at 6 to 2; this time it stood at 5 to 4. Of course, whether the murder is committed with one bullet or four matters little to the corpse; but in this case, liberty lies wounded, not dead, and that the weight of her assailants has been reduced augurs well for her ultimate rescue.

Justice Brennan, who voted with the dissenting four, filed a separate opinion; this was very brief, but it made two important points. First, Justice Brennan stated that any unstrained reading of the Internal Security Act of 1950 showed it to have "legislated immunity from prosecution under the membership clause of the Smith Act." And, in the 1950 Act, "The kind of membership given immunity is not restricted." The majority, in adding its own definition to "membership" and then on the basis of this addition, in finding against the defendant, produced "a substantial revision of the Act and a drastic dilution of rights of immunity which have been granted by it." Second, "if 'active membership' remains as a crime under the Smith Act, there would be serious question whether any Communist—active or nominal—could constitutionally be compelled to register under the 1950 Act."

Justice Brennan did not think that the Government should eat the cake; he was certain that if it did eat the cake, it could not have it, too.

* * *

Another membership case under the Smith Act was decided adverse to the Government on the same day as the *Scales* decision. This resulted in the freeing of John F. Noto; Justice Harlan delivered the opinion.

With no awareness of humor, Justice Harlan stated that "we

start from the premise that Smith Act offenses require rigorous standards of proof"; the Government is reversed here because the Court feels that the requirements it established in the *Yates* case, especially as to evidence of illegal Party advocacy, were not met. The same government "experts" used the same extracts from the same books and pamphlets as in all other Smith Act cases, and once again government spies and informers quoted unnamed teachers at this or that school saying things like "he was the kind of guy they hoped to shoot some day," and this or that "S.O.B. should be put against a wall and shot" and other such Aesopian gems of wisdom. But here, the Court decided the defendant was not sufficiently implicated and actual advocacy of the overthrow of the government—at any time—as a tenet of the Party was not proven.

In the course of explaining to the Government its deficiency, the Court uttered this revealing paragraph:

> There must be some substantial direct or circumstantial evidence of a call to violence now or in the future which is both sufficiently strong and sufficiently pervasive to lend color to the *otherwise ambiguous theoretical material regarding Communist Party teaching,* to justify the inference that such a call to violence may fairly be imputed to the Party as a whole, and not merely to some narrow segment of it. (Italics added.)

That there is ambiguity in the theoretical teaching of the Party —i.e., that, the Court affirms, the view that this teaching urges or advocates the need or the duty now or in the future of seeking the forcible overthrow of the Government of the United States—does not clearly appear and that a contrary interpretation of such teaching may be tenable is, of course, a highly significant admission. In this *Noto* case, Justice Harlan phrases it very much more negatively and grudgingly than an earlier and more libertarian Supreme Court did, in the *Schneiderman* case, in 1943. Then Justice Murphy, speaking for what was still a New Deal Court, held that a showing of active membership in the Communist Party before and

after naturalization was not sufficient to sustain the burden of proving lack of attachment to the principles of the Constitution. At that time, that Justice, speaking for that Court and having examined exactly the same books and pamphlets the Government was to use in the Smith Act cases, held that "a tenable conclusion" was that the Communist Party—going back to the 1920's and forward to the 1940's—

> desired to achieve its purpose by peaceful and democratic means, and as a theoretical matter justified the use of force and violence only as a method of preventing an attempted forcible counter-overthrow once the Party had obtained control in a peaceful manner, or as a method of last resort to enforce the majority will if at some indefinite future time because of peculiar circumstances constitutional or peaceful channels were no longer open.

That in the *Dennis* and *Scales* cases the Supreme Court reversed itself as announced in the *Schneiderman* case is distressing; it is, however, but another instance among many of the Court's reversing previous decisions. In this sense it offers a basis for realistically hoping that the Court may again reverse itself on this question in the near future.

Several Justices, while concurring, chose to append clarifying statements. The Chief Justice and Justice Brennan added that the indictment and prosecution of the defendant were faulty in that the Internal Security Act repealed any possible criminality that may hitherto have attached to membership in the Communist Party. A lengthier concurring statement was offered by Justice Black who invoked the First Amendment as barring the type of prosecutions represented by the *Noto* case. Justice Black added that the Court's opinion was, in effect, telling the Government, "that if it wishes to get convictions under the Smith Act, it must maintain a permanent staff of informers who are prepared to give up-to-date information with respect to the present policies of the Communist Party." Justice Black implies that one can always find informers to report just exactly what they understand their employers want them to report; the Court is saying that in the instant

case, the informers did not make their "evidence" sufficiently detailed and persuasive and applicable.

Justice Black stated his abhorrence of a law whose efficacy depended upon "the perpetuation and encouragement of the practice of informing," and concluded: "I cannot join an opinion which implies that the existence of liberty is dependent upon the efficiency of the Government's informers."

So much for a summary and analysis of the majority and minority opinions in the cases involving the membership clause of the Smith Act so far decided by the United States Supreme Court. We turn now to a similar endeavor in connection with the case involving the registration clause of the McCarran Act of 1950. In many respects this Act and the 5 to 4 decision upholding the constitutionality of one feature in it represent even more fundamental challenges to the American theory of government and to the Bill of Rights than do the Smith Act cases.

CHAPTER III

The McCarran Act Case: How to Follow by Leading

The McCarran Act, in its introductory section, contains a characterization of Communism which was concocted by the extreme Right in American life—by such individuals as Senators McCarran, McCarthy, Jenner, Eastland, Mundt and Representatives Nixon, Smith, Walter, etc.—at the height of the hysteria accompanying the Korean War. That characterization places upon the law books of our country one which in content and in much of its language is identical with the characterization offered by the late Adolf Hitler. That is to say, it finds Communism to be a criminal conspiracy, seeking through deceit, treachery, secretiveness, sabotage, and any and all means barring none, to overthrow forcibly the Government of the United States; adherents of Communism are people who are engaged in this criminal conspiracy because they are the agents of the Soviet Union, and wish to bring about in the United States a Soviet-type government which would itself be subservient to the U.S.S.R.

This legislative "finding" was made because, as Senator McCarran himself admitted on the Senate floor, September 5, 1950, the court proceedings needed under the Smith Act and the care of Communists not to violate that Act's provisions assured "that it will be increasingly difficult to establish in particular cases the violations of existing law." The report on the Bill coming from the

Judiciary Committee in 1950 was made by Senator Ferguson. In that report, Senator Ferguson referred to the "inadequacies of existing law," since Communists tended to avoid advocating the forcible overthrow of the Government, although, he went on, "without doubt" Communists really do advocate it. He added that the McCormick (1938) and the Voorhis (1940) Acts requiring registration of foreign agents also were not adequate, because the Government had never felt able to establish proof of such foreign agency of the Communist Party in a court of law. But the failure to establish proof did not suggest the absence of the act; no, it established, said Senator Ferguson, only that the Communists through "skill and deceit" had managed to "conceal their foreign ties." The absence of evidence was taken to confirm the prejudicial beliefs; these prejudicial beliefs were then put into law as "legislative findings" and then, on the basis of such law and such "findings," the culprits were required to register as being in fact what the findings said they were—even if the government could never prove this before a court of law!

This legislative finding in the McCarran Act is not subject to review by the Subversive Activities Control Board established by the Act—whose members required the approval of the Chairman of the Judiciary Committee, who just happened to be Senator McCarran! The Board is required to accept the findings as a fact; what it does is to ascertain whether or not a particular organization brought before it by the Attorney General does or does not fit the "findings." How, under such circumstances, government appointees, required to accept as true the description of Communism given in the Act which created the Board, could possibly find that the Communist Party itself did not fall under the requirements of the law is, of course, impossible to see.

With this background and explanation, it is possible to begin an examination of the majority decision in the McCarran Act case; Mr. Justice Frankfurter was its author. That decision, in turn, is based upon accepting as fact—*not subject to judicial review*—the characterization of Communism contained in the Act. Furthermore, Justice Frankfurter explicitly found that the Board was correct in resisting appeals by the plaintiff (the Communist

Party) that it review the validity of the "legislative finding." Justice Frankfurter added that the Court in rendering its opinion felt itself barred not only from passing on the "wisdom" of the Act in question, but also from examining into the accuracy or the validity of the "finding"; that finding had been arrived at by the Legislature and—in Frankfurter's theory of the severely limited role of the Court relative to the legislative process—was accepted as binding upon the Court and in no way subject to review by that Court.

This point deserves emphasis because undoubtedly ninety-nine percent of the American people believe that the Supreme Court examined afresh the content of the record before the Board and determined whether or not, on the basis of that record, the characterizations of Communism as given in the McCarran Act were or were not true. This, however, did not happen; on the contrary, I repeat, neither the Board nor the Court ever permitted any attack to be made upon the "findings" per se; at issue only was whether or not the Communist Party fitted the undebatable characterization of Communism given in the law. The point deserves emphasis also because Attorney General Kennedy said, according to the *New York Times* (June 11, 1961), that "it was especially important" that the Court had found the Party guilty as charged "because the Court has such a standing in the United States and abroad, and it wouldn't have done this frivolously."

It is not frivolity that is involved; veracity is the point. In other particulars, too, as we shall see, the Attorney General's report of what the Court decided was in error; but now the main point is that the Court, explicitly refusing to examine into the substance of the charges against Communism itself, as contained in the McCarran Act, found only that the Board and the lower Courts had not erred in requiring registration by the Party. The precise language of Justice Frankfurter is:

> It is not for the courts to re-examine the validity of these legislative findings and reject them. They are the product of extensive investigations by Committees of Congress over more than a decade and a half.

To this, Justice Frankfurter appends a footnote that covers almost an entire page; his references are to numerous hearings by the House Un-American Activities Committee, the Senate Internal Security Committee, and to Reports issued by these Committees. Later in this work we shall have occasion to examine briefly the credibility of these Hearings and Reports.

Since the substance of the definition of Communism—*i.e.,* a definition that was in every particular and in much of its language the same as Hitler's—was not a matter of adjudication, in this instance, but was held to be settled, what really remained was for the Supreme Court to uphold the findings by the Board that the Communist Party was a "Communist Action" group insofar as it "followed the dictates of the foreign power" (*i.e.,* of the Soviet Union). If this were not found, there was no case; if it were found, then—the nature of Communism as the incarnation of everything evil and treasonous being already placed beyond argument—conviction followed. At the same time, the whole logic of the definition of Communism as being indeed an alien, treasonable conspiracy required that the Communist Party be found to be "following the dictates of a foreign power"; one could not—given the acceptance of the original charge—reject the validity of the consequence of that acceptance. If one did reject that consequence, then the whole anti-Communist policy would be shown up for what it is—and always has been, whether conducted by Hitler or Mussolini or Franco or Salazar or Rhee or Chiang Kai-shek or Trujillo—a gigantic fraud, *the* Big Lie, in fact.

* * *

The majority decision recalls the following sequence of events in compiling the Board's record which, it is safe to say, not one out of ten thousand Americans knew or yet knows: The Communist Party was correct in insisting that, on the basis of the Record itself, three of the Government's own witnesses clearly were perjurers. Justice Frankfurter noted that the testimony of Paul Crouch, Manning Johnson and Harvey Matusow was shown to be

perjurious and that on this basis a lower Court had ordered the Record remanded.

Frankfurter notes that the Board re-examined the Record, tore from it the "voluminous" testimony of the three liars—it "constituted a not insubstantial portion of the Government's case," Frankfurter admitted—and then insisted that the Record still was sufficient to uphold the Attorney General's registration demand.

Frankfurter went on to comment that a lower Court had ordered the Record remanded a second time because the Government had insisted, when challenged by the defense, that contemporaneous records of Louis Budenz' testimony were not available, but upon persistence of the challenge, the F.B.I. had admitted that it had erred in its original denial and that such contemporaneous evidence was available. Examination of that evidence showed at once that certain most important elements in Budenz' testimony before the Board—especially testimony relating to alleged financial transactions between the Party and the U.S.S.R.—were contradicted by the original record of Budenz' own "confessions." The lower Court then ordered the Board to strike from the Record all such testimony from Budenz; the Board did so, and still reported that it felt that what remained of the Record was sufficient to uphold the Attorney General.

The Party's request to cross-examine Budenz on the basis of the now admitted existence of contemporaneous F.B.I. records was found not to be practical because of the witness' illness; when the Party then demanded that his entire testimony be stricken since effective cross-examination was impossible through no fault of the defense, the lower Court denied this appeal. Justice Frankfurter upheld the denial on the technical ground that the Party's request was not made in good time—a ruling that, as we shall see, provoked scorching comment from the Chief Justice.

Among the criteria set up by the McCarran Act to establish "foreign agency" were the receiving of financial support from the foreign power; the sending of reports to the power; and the sending of members of the suspect group to that power for training and instruction. The Board itself admitted that there was no good evidence of this—certainly none, it stated, since 1940, which is a

full decade prior to the enactment of the Law; Justice Frankfurter admits that the Board reported an absence of such evidence.

This is of special importance for, of course, the impression created by the commercial press generally and the entire colossal anti-Communist campaign has been exactly the opposite of the finding reported by the Board itself and noted by the Court in its own majority decision. Attorney General Kennedy, himself, in hastily announcing that he planned to enforce the Court's decision, referred particularly to the alleged proof of a financial tie between the Communist Party of the United States and the Soviet Union; "if," he was quoted as saying by the *New York Times,* the Party "was not being financed by the Soviet Union, I don't believe there would be any fuss or bother at all." But, of course, if there were evidence of such financial ties, the Party would long since have been indicted and convicted under either the McCormick or the Voorhis Acts requiring registration by foreign agents;* the fact is that there is no such evidence. This explains the absence of indictments under specifically available legislation; it is clinched by the fact that even the Board established under the McCarran Act was forced to find that contrary to the Attorney General's remark, there was *not* evidence of the Party "being financed by the Soviet Union."

Nevertheless, the Board felt—and Justice Frankfurter agreed with it—that this absence of evidence as to financial ties, the sending of reports, and the sending of members for training and instruction, certainly since 1940, was not fatal to the Government's case.

Another criterion of foreign domination and criminal activity set up by the McCarran Act itself for the guidance of the Board is the extent to which "for the purpose of concealing foreign direction, domination, or control, or of expediting or promoting its objectives" an organization operates secretly. The Board in its original Report held that the Communist Party was guilty of secret practices for both

* It is important to remember that when the Government indicted the officers of the Peace Information Center, headed by Dr. W. E. B. Du Bois, as unregistered foreign agents, under the McCormick Act, it suffered a complete defeat, with the Judge directing an acquittal without allowing the case to go to the jury.

these purposes; but the Court of Appeals, at its first hearing, held that the Board had not established, in its own Record, that whatever secrecy might be present in Party affairs had for its purposes either of the two mentioned in the Act.

The Board, after remanding, while taking no new evidence, reported that while there was *no* evidence that secrecy, where it occurred, was practiced in order to conceal foreign control, it was practiced in order to further the Party's objectives (as defined by the Act, of course!). The Court of Appeals, on its second hearing, again rejected the Board's finding, not only as to foreign control but also as to advancing its own "objectives." Only one conclusion is possible from this: What the lower Court was finding was that if and when secrecy was employed by the Party—*so far as the Board's own evidence showed*—it seemed to be employed against harassment by the FBI and other police agencies. The decision as written by Justice Frankfurter states that though it must be admitted that the Board's Record does not show the use of secrecy for either of the purposes mentioned in the Act, this, too, is not a fatal defect.

Although Justice Frankfurter admits that the lower Court was correct in holding that the charge of secrecy as formulated by the McCarran Act was not substantiated against the Party, he nevertheless uses the Act's formulation of secret practices as one of the reasons why the First Amendment does not protect the plaintiffs in this case! The Justice's words, in this connection, are:

> Where the mask of anonymity which an organization's members wear serves the double purpose of protecting them from popular prejudice and of enabling them to cover over a foreign-directed conspiracy, infiltrate into other groups, and enlist the support of persons who would not, if the truth were revealed, lend their support, it would be a distortion of the First Amendment to hold that it prohibits Congress from removing their mask.

It is necessary that this paragraph be read in the context of the fact that the Frankfurter decision itself admits that the evidence before the Board was not sufficient to establish that the Party employed secrecy—when it did—for the purposes cited in the McCarran

Act, *i.e.*, to hide its alleged foreign connections and to further its "objectives." Only this is germane to a finding that would uphold the Act, and exactly this is missing. As to the matter of so-called "popular prejudice" one hesitates to believe that a Justice of the Supreme Court regrets that Communists have not been assaulted in sufficient numbers—so that, for example, unlike the Negro people, over five thousand Communists have not (yet) been lynched—but certainly the language of the Justice permits one to come to a conclusion not far from this startling one.

There is one other paragraph where Justice Frankfurter comes to grips with the question of whether or not the Act being contested conflicts with the First Amendment, and the sophistical reasoning in that paragraph is as great as in the one already quoted. This paragraph, in full, reads:

> The Communist Party would have us hold that the First Amendment prohibits Congress from requiring the registration and filing of information, including membership lists, by organizations substantially dominated or controlled by the foreign powers controlling the world Communist movement and which operate primarily to advance the objectives of that movement: the overthrow of existing government by any means necessary and the establishment in its place of a Communist totalitarian dictatorship. We cannot find such a prohibition in the First Amendment.

But, of course, the Communist Party "would not have the Court" hold any such thing. The main point is that the Communist Party insists that the characterization of Communism in general and of the Party in particular as contained in the McCarran Act and in the finding of the Board created by that Act is utterly false. The main point is that the characterizations contained in the McCarran Act "findings" constitute crimes under laws requiring foreign-agent registration, forbidding spying, prohibiting sabotage, and punishing sedition; the Law constitutes a legislative act of attainder in that it requires people to register as in fact guilty of these crimes, burdens them with severe disabilities for having so registered and threatens

them with very severe punishment if they do not swear that they are the criminal dastards described in the Act! The Party contends that all this constitutes a violation of the First Amendment; Justice Frankfurter, operating on his self-imposed concept of the absolute inviolability of the McCarran Act's "findings," berates the Party itself for failing to agree with their inviolability.

We return now to the content of Justice Frankfurter's opinion. If it is not financial connections; if it is not the dispatch of reports; if it is not the sending of "trainees"; if it is not the employment of secrecy for purposes defined in the Act—if all these criteria, set up in the Law itself—are not established by the Board's Record (*and Frankfurter's own decision admits all this*), then what does establish this foreign domination which justifies the order to register?

The answer is one thing and only one thing, according to the Record and the majority decision itself. That one thing is the coincidence of views held by the Communist Party of the United States and the Soviet Union and/or the Communist Party of the Soviet Union. This is enough to establish the accuracy of the central charge in the McCarran Act—that the Party "follows the dictates of a foreign power." But to make it enough takes some doing, and that is one of the reasons that Mr. Justice Frankfurter requires 112 pages before he feels able to write the ominous word: "Affirmed."

First, one has the problem of the word "dictates." In normal usage this carries with it some connotation of compulsion—as in the relationship between a guard and his prisoner, or between an army officer and an enlisted man, or between an employer and a worker. No such relationship has been established—that is admitted by the Board and by the Court. Well, the way to answer that is that in this case "dictates" really means "agrees" or "acquiesces" and if there is some "dictation" it is of a rather extraordinary kind carrying with it not a compelling but a volunteering.

Having defined "dictates" in accordance with the necessities of the case, one turns to the word "follows." Do you think, dear reader, that "follows" means, as the dictionary says, "To go or come after;" "to result from"; "to copy after"? Well, for the purposes of the McCarran Act and the Board's finding, and the decision of five members of the United States Supreme Court, as conveyed through

the pen of Justice Frankfurter, the word "follows" does not have such meanings. The difficulty, you see, is this: The central witness, upon whom the entire case of the Government finally rested—after the Board admitted failure after failure and after witness after witness was shown to be perjurious—was Professor Philip Mosely, Director of the Russian Institute at Columbia University. The professor brought forward forty-five international issues in the history of the world during the past thirty years and affirmed that there had been "no substantial difference" between the announced positions of the Communist Party of the United States and of the Soviet Union on these matters. Well, then, it may be asked, what is the difficulty?

The difficulty appeared when it was demonstrated, by witnesses for the Party, that in more than half the cases picked by Professor Mosely himself—to be precise, in 27 out of 45—the positions stated by the Communist Party of the United States *antedated* the positions affirmed by the Soviet Union! This was true even using the sources cited by the professor himself; if one more fully delved into the time sequence involved in the issues brought forward, even more than 27 cases would have been shown to have been acted upon by the U.S. Communist Party prior to any opinion being offered by the Soviet Union. For example, Professor Mosely in citing the Party's position on the Japanese peace treaty offered an article from the *Daily Worker* dated August 23, 1951, but the Party's position on what such a peace treaty should be was announced on July 29, 1945—*i.e.,* even before the Soviet Union entered the war against Japan!

Thus, under the circumstances demonstrated in the Board's Record itself, not only did dictation partake more of the voluntary than the compulsory, but he who was "accused" of following was shown to have followed by being first, and he who was being followed was not in the front but in the rear!

Mr. Justice Frankfurter, in a footnote on this point, observes: "The Government expressly disclaimed any attempt to establish chronological sequence between the announced positions of the two." Surely, however, what is involved here cannot be spatial sequence; what then is involved in "follows"? Can it be anything other than temporal sequence which might—and might not—show some

kind of ideological subordination—assuming that this has now become a crime in the United States?

Is there anything in *Alice in Wonderland* "queerer and queerer" than finding one guilty of "following the dictates" of someone else by bringing forth evidence that the accused has *voluntarily preceded* that other party?

Of course, the Party brought forth other arguments, including the reasonableness of the positions it took—as on the Italian elections in 1948, the War in Korea, the seating of China in the United Nations, etc.—and insisted that this might logically explain to any unprejudiced mind why it held the views it did. But whether or not the views it held might be reasonable was held to be irrelevant. And when the Party demonstrated that on many issues, groups and individuals and organs indubitably—up to this point, at any rate—not Communist took substantially the same views as did the Party, this also was held to be irrelevant. Only a substantial identity of views between the Party and the Soviet Union—no matter who announced such views first, no matter how reasonable the views themselves might be, no matter how valid subsequent events might have proven the views to have been, no matter how many other groups, individuals, or publications might have taken substantially similar positions to those taken by the Party—was held to be relevant and such substantial identity being demonstrated, the Party was "guilty" under the McCarran Act.

The Party further explained that substantially similar positions would be taken on significant events and problems if to those problems different people brought substantially similar basic theories and philosophies; hence, those finding historical and dialectical materialism the most satisfactory world outlook would naturally and normally arrive at substantially similar conclusions when seeking to comprehend any significant social or economic or political or philosophical problem. Therefore, no matter how one looked at this question, what was being condemned in the McCarran Act was a system of thought, and not at all, really, a question of foreign agency or sabotage or treason, all of which are made criminal by other laws.

Let it be repeated that the majority decision rested ultimately upon an insistence that the only proof required—and, in fact, pres-

out, in the case before the Court—was a substantial identity in views between the accused and the Soviet Union. After all the thousands of words in the 112 pages, that is what the Frankfurter decision says—so far as it says anything of substance upholding the Act.

Hence, the only tenable conclusion from the record is that the sole adequate defense from prosecution under the McCarran Act as a "Communist-action" group (let alone a "Communist-front" or "Communist-infiltrated" group) is never to take a position on anything that is or might be—*in the future*—substantially similar to a position taken by or to be taken by the USSR. Since both past and future are included and since no topic is excluded, the only thoroughly safe thing to do is not to take a position on anything at any time!

This conclusion is not at all simply a theoretical one, for a Chairman of the House Un-American Activities Committee—whose findings are cited as authoritative in the majority's opinion—Congressman Martin Dies, advised the public: "Never participate in anything without consulting the American Legion or the local Chamber of Commerce," and a "repentant witness," the band-leader Artie Shaw, testified before the same Committee: "I am at the point now where I am afraid to join any organization. I haven't joined an organization for three years because I don't know what any word stands for any more. . . . I wouldn't sign anything today unless I had the advice of seven lawyers and the granting of permission by this Committee."

In fact, even abstaining from any opinion on any subject does not guarantee full safety; full safety would come only if one could always take a position on everything which was contrary to the position that the USSR had taken or might take on any subject known or to become known.* For final and full insurance, having

* It was this kind of reasoning which led to the hounding of Professor Owen Lattimore and his being indicted twice for perjury. In replying to the second indictment against him for perjury for having denied that he had been "a follower of the Communist line or a promoter of Communist interests," Professor Lattimore stated: "The definition in the indictment of a follower of the Communist line includes anyone who expresses any opinion knowing that that

accomplished this, one should then set out to watch everybody else, and at the slightest hint that someone is deviating from this path of absolute purity, denounce him at once to the authorities—if anyone could be trusted with authority under these "ideal" conditions.

This is the logic of "Americanism" à la McCarran and Eastland; how welcome in such an America would be Thomas Jefferson! In such an America what label would be suitable for the Declaration of Independence so that one could send it through the mails?

Before leaving the Frankfurter decision, two additional points must be made. It rejected as premature the question of the conflict between the compelling of registration under the McCarran Act and a violation of the self-incrimination feature of the Fifth Amendment. It did so on the grounds that the Act itself—according to Justice Frankfurter—is only regulatory and not prohibitive, and that there was no way of knowing whether or not the officers of the Party would or would not register.

The matter of the prohibitive character of the Act really is patent, and is dealt with in several of the dissenting opinions. Certainly, the fact is that registration automatically brings with it, under the terms of the law, severe disabilities and punishments—*i.e.,* the denial of all tax benefits, the refusal of passports, disqualification for any government employment and disqualification for any employment in any industry having a defense interest. Justice Frankfurter, however, declared that the Court's decision was limited only to affirming the constitutionality of the registration requirement; as to the constitutionality of the disabilities and penal-

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opinion also is shared by Communist Russia. Under this indictment, no writer on foreign affairs could be safe from prosecution unless during the past twenty years he had always opposed everything that Russia advocated. Under this indictment, the entire Democratic and Republican Administrations could be accused of perjury if they said they had never knowingly followed the Communist line—so could Presidents Roosevelt, Truman and Eisenhower, all of whom have been accused of following the Communist line. Inevitably this country cannot always take a position in exact opposition to the position taken by Russia." (*N. Y. Times,* October 8, 1954.)

ties attached to one who does register, these, his decision indicated, may be contested in the future as occasion may require.

Whether or not the leaders of the Party would register seemed to the Court majority uncertain because in registering they would only be affirming that which was a well-known fact, *i.e.,* that they were leaders of the Party. Here one has a denial of the practice of secrecy on the part, at least, of a substantial section of the Party's leadership to justify the view that raising the Fifth Amendment question is "premature." That is, denying one of the very charges in the McCarran Law is turned to the disadvantage of the plaintiffs!

Sophistry surely cannot go further than Justice Frankfurter's remark: "We do not know that, after such an order [of registration] is in effect, the Party will wish to utilize the mails or any instrumentality of interstate commerce for the circulation of its publications." And, "That the record here does not show that any present members, affiliates, or contributors of the Party have withdrawn because of the threatened consequences to them of its registration . . . or that any prospective members, affiliates, or contributors have been deterred from joining the Party or giving it their support."*

On the basis of this kind of manifestly specious reasoning, the Court managed to postpone consideration of the Fifth Amendment question. But, and this is the second point that needs making, Justice Frankfurter felt it necessary to grant, on June 23, a motion for a stay filed by the Party. In granting this stay, the Justice himself noted that very important was the problem of the Fifth Amendment and the difficulty, confessed by the Government's own attorneys, as

* Frankfurter's opinion on this point in this case would seem to be contradicted by his own opinion as expressed in *Joint Anti-Fascist Refugee Committee v. McGrath* (1951) where the Court, by 6 to 3, remanded because the Attorney General, it found, had arbitrarily listed the organization involved as being "subversive." Wrote Frankfurter, in this case, where nothing like the penalties involved under the McCarran Act was present: "This designation imposes no legal sanction on these organizations other than that it serves as evidence ridding the Government of persons reasonably suspected of disloyalty. *It would be blindness, however, not to recognize that in the conditions of our time such designation drastically restricts the organizations, if it does not proscribe them.*" (Italics added.)

to how to bring about an actual test of that problem, in view of the very complex provisions of the Law.

This stay means, of course, that the enforcement of the Law must be postponed until at least the next sitting of the Court—to commence in October, 1961. At that time, the Court will decide whether or not to grant the plea for a re-hearing. While precedents on the whole are against its granting the plea, it certainly is far from impossible that, in view of the 5 to 4 vote, the intensity of the dissents and the admittedly great cumbersomeness of the law—quite apart from political considerations of a domestic and an international nature—such a re-hearing will be granted. In any case, the earliest possible implementation of the law—which can come only on the initiative of the Office of the Attorney General—is early November, 1961; should a re-hearing be granted, then the whole issue is re-opened, and the possibility of a reversal immediately appears.

CHAPTER IV

The Dissents: "Dangerous Thoughts" and Thomas Jefferson

Six years ago, Walter Lippmann, commenting on the then mounting resistance to McCarthyism, and having in mind specifically the McCarran legislation, wrote: ". . . the great majority of the leaders of American public opinion are no longer willing to stand for the theory that espionage, sabotage, and subversion can be dealt with only by ignoring the Constitution, and by conniving at what is nakedly and simply lynch law."

Now that the June 5 decisions have been rendered—and most particularly since a stay of one of them has been granted—one hopes that such leaders of public opinion, including Mr. Lippmann himself, will speak out forcefully and dramatically. One of those who has done so is the Chief Justice of the United States Supreme Court; Mr. Warren's dissent in the McCarran Act case is, in fact, a scorching denunciation of the legal lynching of which the majority was guilty.

The Chief Justice states and elucidates six grounds for rejecting the Government's case. They are the following:

1) The Government refused to produce the original memoranda recorded by the F.B.I. from the informer Gitlow's reports. The Chief Justice pointed out that Gitlow was, at the very least, a "questionable" witness; but, quite apart from that, the fact that the plaintiff demanded the contemporaneous records of his "disclosures" and

that this request was not granted represented a major infringement upon the legal rights of the Communist Party and alone required a reversal.

The Chief Justice added:

> It is certainly possible that the petitioner, armed with these memoranda, may have been able to impeach significantly the testimony of Gitlow, who, as has already been indicated, was a key witness for the Government, and whose expulsion from the Party, in 1929, undoubtedly made him hostile toward the petitioner.

2) The Chief Justice pointed out that elementary rules of judicial procedure (and he proceeded to quote at length from such a basic text as Wigmore on evidence) required that all the testimony of the informer Budenz be stricken once the Government admitted that it had misinformed the lower Court when it had stated that the contemporaneous records of his reports were not available, when in fact they were. True, the lower Court had ordered stricken testimony by Budenz that was clearly shown to contain inconsistencies; but the failure to produce the original records, and the impossibility of cross-examining Budenz because of his illness—in the face of the fact that he was a key witness for the Government—made it necessary, if basic judicial procedures were to be followed, that all his testimony be stricken. This was the more urgent because the Chief Justice found, on reading the Record, that there existed "the not unlikely possibility that much of Budenz' testimony was unreliable." The Chief Justice added that not only did the Board order stricken from the Record certain testimony by Budenz manifestly inconsistent with his contemporary disclosures, but that: ". . . in three additional places in its Report the Board found it necessary to explain seeming inconsistencies in Budenz' testimony. If the petitioner could have discredited Budenz' testimony on the basis of his prior statements [through cross-examination], it is possible that the Board would have resolved these other discrepancies against Budenz and the Government."

3) The Chief Justice further found that the McCarran Board

itself had not found the Communist Party to be engaged in illegal advocacy, but rather, and at most, in the advocacy of the use of force sometime in the future under particular circumstances "if necessary." If there was any advocacy of force—*as shown by the Board's own Record*—said the Chief Justice, it was in terms of an abstract doctrine and clearly not any kind of advocacy even remotely suggesting the incitement of anyone to action. When, continued the Chief Justice, the majority decision "brushes aside" the Party's argument that therefore the *Dennis* and *Yates* standards as set by the Court itself had not been met in this case by saying that the McCarran Act was "regulatory" and not "prohibitory," "it blinks reality." On the contrary, said Mr. Chief Justice Warren, the McCarran Act is "as prohibitory as any criminal statute."

4) The fact that the Board itself was unable to find that the Party employed secrecy for the purposes of overthrowing the Government or for any other nefarious purpose spelled out in the McCarran Act, also appeared to the Chief Justice to be a fatal defect in the Government's case.

5) Most of what evidence the Government did present, through such witnesses as Budenz, Gitlow and Kornfeder—"whose demeanor," said the Chief Justice, "led the Board 'to examine his testimony with . . . caution' "—which might be construed as vindicating its case, was called "stale" by Warren. Almost all of it, he pointed out, referred to the period prior to 1940—that is, to a period twenty-one years prior to this moment, and ten years prior to the enactment of the law the Court was considering. Not only was the evidence held to be "stale"; in addition, the Chief Justice observed that continuity between the evidence antedating 1940 and any activities or advocacy since 1940 had not been demonstrated by the Government.

6) And, concluded the Chief Justice, in any case—particularly in view of the decision of the same day upholding the constitutionality of the membership clause of the Smith Act—the violation of the Fifth Amendment in the present case was absolutely plain and not subject to rational dispute. He went on to observe that even the majority had not dared to deny (or to affirm) such a conflict but had simply dodged the question by asserting that it was "premature" to decide the matter. How would justice be served, asked the

Chief Justice, by prolonging further this matter, by putting individuals to the additional great expense of further court proceedings? The violation of the Fifth Amendment was plain—in one case a man is sentenced to jail because he is an active member of the Communist Party, and in another case members are ordered to register as members, with non-registration bringing severe penalties!

On any one of these grounds, the Chief Justice thought that the Government's case should be reversed; in the face of the weight of the simultaneous existence of all six such grounds, the Chief Justice concluded that reversal was the "only disposition that would be consistent with the fastidious regard for the honor of the administration of justice" to be expected from the Supreme Court of the United States.

Never before in the history of the United States has there been so unequivocal and smashing a dissent by a Chief Justice of the Supreme Court.

* * *

Associate Justice Hugo L. Black of Alabama has assured for himself immortality with Jefferson, Madison and Lincoln as an unswerving and heroic defender of the Declaration of Independence and the Bill of Rights. He has stood up under severe fire for a generation, steadfast in his dedication to these principles and to the sacred duty of the Supreme Court to guard those principles against all claims of "patriotism," of the alleged superior needs of the country's "security," and all theories of the inviolability of legislative will.

His ringing dissents in the Smith membership case and in the McCarran Act case will be read generations after the 170 pages of the majority decisions rendered in these cases by Justices Harlan and Frankfurter will be referred to only as marvelous examples of the tortured reasonings of first-class minds vindicating despicable causes.

Justice Black bases his McCarran Act dissent upon his belief—the reasoning for which he demonstrates with great persuasiveness—

that it violates the Bill of Rights in every particular in both letter and spirit. He shows that the Act deals with opinions and seeks the outlawry of groups solely on the basis of opinions. So magnificent is the argumentation that one is tempted simply to quote from it *in extenso*. Four brief extracts may convey something of the flavor of this historic document.

After examining the structure of the McCarran Act itself and of the Board it establishes—and the unprecedented powers of that Board acting in conjunction with the Attorney General—Justice Black observes:

> The Act thus not only is a legislative bill of attainder but also violates due process by short-cutting practically all of the Bill of Rights, leaving no hope for anyone entangled in this legislative-administrative web except what has proved in this case to be one of the most truncated judicial reviews that the history of this Court can afford.

Following his demonstration of the gross violations of the rights of the instant defendants in the case, Justice Black warns:

> I realize that these laws are aimed only at the Communist Party. No one need console himself, however, that the policy of using governmental force to crush dissident groups upon which they are based can or will be stopped at that point.

Justice Black then engages in a careful examination of the history of inquisitional and witch-hunting legislation and persecution in other countries and in past centuries; he insists that the present case is of the same genre and that the present majority-opinion reasoning was identical with the reasoning of other courts upholding such legislation and persecution in the past. He recalls at some length, in particular, the history of the enactment and enforcement of the Alien and Sedition Laws of 1798 in the United States and shows the deadly parallel existing between then and now. He then continues:

> I regret, exceedingly regret, that I feel impelled to recount this history of the Federalist Sedition Act because, in all truth, it must be pointed out that this law—which has since been almost universally condemned as unconstitutional—did not go so far in suppressing the First Amendment freedoms of Americans as do the Smith Act and the Subversive Activities Control Act [the McCarran Act]. All the fervor and all the eloquence and all the emotionalism and all the prejudice and all the parades of horrors about letting the people hear arguments for themselves were not sufficient in 1798 to persuade the members of Congress to pass a law which would directly and unequivocally outlaw the party of Jefferson, at which the law was undoubtedly aimed. The same arguments were made then about the 'Jacobins,' meaning the Jeffersonians, with regard to their alleged subservience to France, that are made today about the Communists with regard to their subservience to Russia. Even the language of the charges that were hurled was substantially the same as that used in the charges made today.

And in the concluding section of his dissent, Justice Black states, what in better times being considered axiomatic would not need declaration:

> In my judgment, this country's internal security can better be served by depending upon the affection of the people than by attempting to instill them with fear and dread of the power of the Government.

* * *

Additional separate dissents were filed by Justices Douglas and Brennan. Both affirmed, on the grounds of the inviolability of the "legislative findings" in the McCarran Act, that the order to register, in the case of the Communist Party, did not violate the First Amendment. Both agreed, however, that the registration section of the McCarran Act was unconstitutional because it clearly violated the Fifth Amendment rights of the plaintiff. Both indicated

that there were additional constitutional questions involved in the McCarran Act, but since they felt that the violation of the Fifth Amendment was clear and sufficient to justify reversal, neither developed any other objections. Justice Douglas thought it was manifest that the Government could not constitutionally require "a person to sign a registration statement which makes admissions that would not survive challenge under the Fifth Amendment if asked orally."

Involved here, said Justice Douglas, was "a plain violation of the Fifth Amendment." He thought it useful at the present juncture to explain the importance of the protections afforded by the Fifth Amendment:

> The privilege is often criticized as a shield for wrongdoing. But not every hostile silence which greets official interrogation has its beginning in wrongdoing. In a nation such as ours the Government must often meet with hostility; we are not constrained to admire its activities; we are free to detest them. That freedom could not long remain if the Government were free to require us to recount all our doings. The Government may still threaten silence with prison, but its power to do so stops short when information sought is incriminating.

Finally, in direct conflict with the Frankfurter opinion that raising the Fifth Amendment question now is premature, Justice Douglas noted:

> A final order to register under the Act has been issued. The disclosure requirements are clear and specific. Now is the time to raise Fifth Amendment questions. To relegate the parties to another time and place in order to raise those constitutional objections *is to fashion an extremely harsh rule to fit the Communist Party but no one else.* Default means a risk of criminal prosecution. No person, I think, should be forced to wait until his default to raise his constitutional objection. The great injustice in what we do today lies in compelling the officials of the Party to violate this law before their constitutional claims can be heard and determined. *Never*

before, I believe, have we forced that choice on a litigant. (Italics added.)

* * *

If only the incontrovertible arguments of the dissenting opinions in the Smith and McCarran Act cases—quite apart from additional arguments against both Acts—could be gotten to the American people, such a storm of protest would arise against both acts and the decisions sustaining them that they would soon be as dead as the British Crown's claim to New England.

CHAPTER V

What Registration Means: From Freedomland to Wonderland

With rare exceptions the means of communication in the United States have given their readers, viewers and listeners to understand that all the McCarran Act decision does is demand that Communists register as being Communists. This is, as we already have indicated, an essential element in Justice Frankfurter's reasoning where he insists that the Act itself is administrative and not prohibitive and that there is "no reason to believe that in the future they [Communist leaders] will decline to file a registration statement whose whole effect, in this regard, is further to evidence a fact which, traditionally, has been one of public notice."

This was the argument of one of the main sponsors of what became the McCarran Act; Senator Mundt stated in the Senate, August 17, 1950, in arguing for this legislation: "We say to the Communists: 'You must register. You must come out into the open. . . . You must register as a member of the Communist Party. . . . You must register and come out into the open, or you must go to jail . . .' we give them their choice. That is their American right."

Mr. Roscoe Drummond, the syndicated *Herald Tribune* columnist, noting that "in the minds of some people there is anxiety that this decision undermines the constitutional rights of free

speech, free assembly and the privacy of political beliefs," assures such folk that there is no cause for alarm and that constitutional liberties are in no way jeopardized by the decision. This is because, he explains, all the Act and the decision require is disclosure; it forbids nothing, it punishes nothing, it inhibits nothing. It simply insists that the Communists register their names and their sources of income and threatens punishment only if they fail to do so. "Of course," he writes (June 11), "the Communist leadership will try to evade the law. That is its nature." And that will be its hardship, he implies; but except for this organic proclivity of Communists towards disobeying the law, there is nothing but disclosure in the registration provision, Mr. Drummond's readers are assured.

Congressman Francis E. Walter, Chairman of the House Un-American Activities Committee, in a letter to the *New York Times* (June 14, 1961), likewise insists that the Act and the decision only require registration, analogous, he writes, to the "regulations of the Securities and Exchange Commission, our Pure Food and Drug laws, etc. . . ."

Meaning no disrespect to a distinguished Justice, a United States Senator, a leading publicist and an Honorable Representative, it nevertheless is necessary to point out that all, all these honorable men have conveyed something less than the whole truth about this matter of "merely registering."

First, as we have already indicated, the act of registering carries with it such severe penalties that it makes of the registrants second-class citizens. These penalties include tax disabilities, the prohibition of application for or use of a passport and denial of employment in government or in defense-related industries. The Supreme Court itself, in the *Lovett* case (1945), held that denial of "any opportunity to serve the government is punishment, and of a most severe type." Here additional onerous denials are involved.

Second, in terms of Congressman Walter's argument that the registration provisions of the McCarran Act may be compared quite aptly to similar labeling provisions in Pure Food and Drug Acts or in the Securities and Exchange Act, what is illuminated here is the mind of the eminent Chairman, rather than the nature of the Law and of the decision. For, of course, what is involved in

the discussion of the McCarran Law (and the Smith Act) is the question of civil liberties; but to Congressman Walter whether one labels the contents of a pill or the backing of some corporation stock or the contents of a human being's brain is one and the same thing. Under such assumptions there are no problems of civil liberties or civil rights, of course; with these assumptions universally accepted it is certain that Mr. Walter's Un-American Activities Committee would never again have a recalcitrant witness.

It is pertinent to add that the original Pure Food and Drug Act was denounced by Mr. Walter's ideological parents in their day as "communistic" and that one of the sources of that Act was a novel written by a militant Socialist whose central character was a fiery and devoted Socialist worker-organizer—just exactly the type of person most outrageously victimized by Mr. Walter's Committee. Similarly, the Securities and Exchange Act was the kind of New Deal legislation widely denounced as "socialistic" and "communistic" in its day.

Third, the McCarran Act does not require Communists to register as Communists; the Act requires Communists to register, under oath, their agreement with its definition of "Communist," that is, to register as saboteurs, deceivers, criminal conspirators, traitors, and then says that if a Communist does not sign a sworn statement so defining himself he will be liable to imprisonment for five years *for every day* he fails to so publicly label himself!

And this requirement is upheld in the face of a ruling announced by the same Court on the same day, affirming the constitutionality of sending a person to prison because he is shown to have been an active member of the Communist Party! For this the penalty may be up to ten years. As Senator Mundt remarked, here we have an example of free American choice; an example of McCarran-and-Smith "democracy"—if you do register you go to jail for up to ten years; if you don't register you go to jail for five years for each day you so fail to act!

What do these neo-fascist concocters of dragnets think the Communists are? Do they think Communists will admit perjury, like Van Doren and then receive a "God bless you" from some political hack and amble off, contrite but well-heeled? Do they think Com-

munists will boast of being dupes and dopes like some whining and craven creature who wants to protect his $1,000-a-week job? Do they think Communists will "confess" to having been "spies" like Whittaker Chambers so that they can make a million dollars writing "revelations" for *Life* magazine and religiously-flavored inspirationals for Hearst? These neo-fascist falsifiers and would-be Hitlers must think Communists are what *they* are.

Gus Hall, General Secretary of the Communist Party, stated at a press interview immediately after the Supreme Court decisions:

"We are not going to be informers. We will not be stool pigeons. We will not betray the confidence and trust of a single member of the Party, or a single Party supporter.

"We would rather spend the rest of our days in prison than betray anyone who is in the fight for freedom."

Fourth, the whole purpose of registration under the McCarran Act is to accomplish through a legislative bill of attainder what the ruling class, with its Courts and with its own laws, has not otherwise been able to do. For, of course, there are on the statute books in the Hatch Act and the McCormick Act and the Voorhis Act and the Smith Act and the whole elaborate structure of Loyalty-Oath executive orders and regulations, and anti-espionage and anti-sabotage acts, laws enough and to spare making criminal any one of the crimes attributed as habitually characteristic of Communists in the "findings" of the McCarran Act.

But, as the *Stanford Law Review* stated in a survey of "Control of Communist Activities" (November, 1948), "The Department of Justice has apparently thought that the Communist Party of the United States could not be compelled to register under either the McCormick Act or the Voorhis Act" and it could not be compelled to register under those laws because they require proof of the actual crime in a court of law, with all the safeguards of due process there available. So, as this law journal noted, the advantage of the then proposed Mundt-Nixon Bill—which became the McCarran Act—was its "provision for an administrative determination" of the existence of criminal activity on the basis of a finding of such criminal activity attributed by legislative fiat to the Communist Party—and, on the basis of criteria laid out in the

Act—to "Communist-front" and "Communist-infiltrated" organizations.

But such "short-cuts" are bills of attainder, and bills of attainder are outlawed in the Constitution of the United States. The Communist Party and its leaders and members could never falsely register as being what they are not and what—in forty-two years of unabated hostility—the Government has never been able to prove that it or its members are.

Communists would refuse to label themselves the hateful things they are called in the McCarran Act not only because they know these labels are monstrous slanders and not only out of ordinary self-respect and not only because they would never descend to the role of informers upon friends and comrades. They would refuse to so label themselves because they see in the requirement a monstrous hoax aiming at all progressive and democratic and equalitarian thought. They see the McCarran Act and its registration procedure as a way-station on the well-marked road toward fascism at home and war abroad, toward cataclysmic disaster for the American people and for all humanity.

To consider oneself in his heart a Communist is no small thing. One who is a Communist only hopes he really is worthy of that magnificent title. A man or a woman does not easily affirm that he or she belongs anywhere with such company as Dolores Ibarruri, Sean O'Casey, Louis Aragon, Maxim Gorky, Anna Seghers, Theodore Dreiser, Pablo Picasso, Bertolt Brecht, Clara Zetkin, Gabriel Peri, Julius Fuchik, Georgi Dimitroff, Ernst Thaelmann—and Lenin. One who is a Communist does not easily affirm that he belongs among the great and millions-strong army of the known and unknown leaders of the Resistance against Hitler, those who were in the front rank of the immortal Red Army's defeat of fascism, those who have organized the poor and down-trodden, the oppressed and despised, the hated and vilified throughout the world for a century now, and who have led in the building of magnificent societies, infinitely better than those they replaced, in one-third of the globe.

Surely to seek to be part of this sacred company is not something of which one is to be ashamed; it is rather something to aspire to

and work towards. But to put oneself down as a traitor; to become an informer; to join in making a mockery of the Bill of Rights; to vitiate the freedom of one's own country—all these patriotic duties are for the Gitlows and Lautners and Budenzes in the FBI stable.

For all these reasons the Communist Party—no matter what the penalties and no matter what the pressures—would never degrade itself by registering under the provisions of the infamous McCarran Act.

CHAPTER VI

The Informers: "Squalid Liars" and "Great Americans"

In the preceding pages, occasions have arisen for some comment on the character of testimony habitually forthcoming from police spies, informers, and embittered renegades in political trials. Note has been taken of the fact that the Government itself was forced to admit that in the Hearings before the Subversive Activities Control Board, three of its witnesses—two of them renegades and one of them a police "plant"—had perjured themselves. The conflicting character of the testimony of Budenz in those Hearings and the "dubious" nature of Gitlow's and Kornfeder's testimony likewise were noticed by both the Board and members of the Supreme Court. Justice Black, in his opinion in the *Noto* case, as we have observed, also commented adversely on the notoriously untrustworthy character of such testimony and pointed out that one of his main objections to proceedings under laws such as the Smith Act was that it made necessary, if they were to be enforced, heavy reliance upon the testimony of exactly such types as police agents and informers.

Since it is a fact that over ninety percent of the Record in the McCarran case and the testimony in the Smith Act cases (both under the conspiracy and the membership clauses)—insofar as the prosecution was concerned—came from such witnesses, it is pertinent in a work devoted to an examination of those cases to offer the

reader, if only quite briefly, additional evidence on the thoroughly unreliable nature of such testimony.

First may be noted the fact that our Courts and their stenographers and their juries, and newly-created "anti-subversive" Boards and their members and recorders as a rule are utterly uninformed about matters central to the nature and the meaning of Marxism-Leninism. In the hostile atmosphere surrounding this subject in the United States, since World War II in particular, a discussion of such matters is difficult even under ideal conditions—as in a University lecture hall, for example; but sympathetic presentation of these questions within the charged atmosphere of a political trial or hearing—with defendants and plaintiffs and policemen and bailiffs and newspaper headlines—is an extremely difficult task.

Some idea of the difficulties, even from a technical point of view, may be exemplified by calling to the reader's attention the manner in which the Board recorder transcribed the testimony of the Party's witnesses at the Hearings held under the McCarran Act.

The ancient *poet, Terence,* became the *ancient proletariat;* Lenin's *mastery* of Marxism became his *massacre* of Marxism; imperialism, the stage of *moribund* capitalism became the stage of *more abundant* capitalism; *Lord Bryce,* who seventy-five years ago characterized the Republican and Democratic Parties as Tweedledee and Tweedledum, became *Lord Christ;* dialectical materialism became *direct imperialism.*

At times, in the hearings, this created some tense moments. Thus, the attorney in charge of the Government's case—a Mr. Paisley of Mississippi—at one point demanded that Elizabeth Gurley Flynn, a witness for the Party, give more details concerning the many street fights in which she had participated.

"Street fights?"

"Yes, street fights."

"What are you talking about? I've not been in street fights."

"So," said Mr. Paisley, sensing a significant victory, and perhaps hoping that he would be able to show that at least one witness from the non-governmental side might be a perjurer, "did you not testify, as shown on page so-and-so of the transcript, to your participation in many street fights?"

And, sure enough, so it was recorded and so it was understood by the Government's counsel and so now was he arguing—until finally the veteran battler for civil rights persuaded all and sundry that she had really testified to taking part in many *free speech* fights, not in *street* fights!

Of course, all this partakes of much humor not to say hilarity, but these were the Hearings being held before an official Board of the United States Government, and it was on the basis of that Record that the Board made its findings, and it is those findings which, on June 5, 1961, the United States Supreme Court found to be satisfactory.

* * *

Many tragic chapters in the history of all peoples demonstrate that police spies, informers and loquacious turncoats are the most unreliable witnesses one can find. None made more use of such characters than the former Iron Chancellor of Germany, Bismarck. He had his troubles with them, as he once explained in a letter to his wife:

> Owing to lack of material, police agents lie and exaggerate outrageously. . . . Bad characters among them—good characters do not accept such posts—naturally hit upon the idea that if other people will not attempt any crimes, they must be helped. For if it is impossible for them to report that something is doing, they become superfluous. So they help out, "correcting fortune," as the French adage has it.

Having in mind conditions in our own country, the late Professor Zechariah Chafee, Jr., wrote, in 1952:

> I want to make absolutely clear my position about spies as witnesses against men accused of political crimes. I am not saying that such spies will tell nothing in court except lies. Undoubtedly, some of them will do their best to tell the truth during their whole testimony while many others will mix a good deal of truth with falsehoods. What I do say is that there

is a much greater risk of false testimony from spies than from ordinary men.

Specifically in connection with the anti-Communist hunting in the United States since 1945, the Government has admitted that witnesses it had repeatedly used were, in fact, perjurers; the list includes Paul Crouch, Manning Johnson, Mrs. Marie Natvig, David Brown, Lowell Watson, and Harvey Matusow. When the last-named created something of a sensation, in 1955, by admitting and detailing his lies—concocted, he insisted, in active collaboration with the FBI and Senator McCarthy—in the book *False Witness,* he was finally jailed by the Government on the charge of perjury. The perjury, said the Government, was committed not in the original anti-Communist ravings, but rather in Matusow's insistence—in the case involving the frameup of the labor leader Clinton Jencks—that he had then been lying!

Time magazine (Feb. 14, 1955), commenting on Matusow's book, told its readers that "The FBI has known for years that Matusow was a squalid liar," and "The FBI now says that it dropped him in 1950."

I think it is true that the FBI knew Matusow was "a squalid liar"; that is why it employed him. And it certainly had not "dropped him in 1950." On the contrary, it was since 1950 that the FBI really used Matusow: in 1952 he was a featured Government witness at the McCarran Board hearings; his lies covered 700 pages of the record in the trial of 13 leading Communists in New York City in 1952 (and they were all convicted); he was a witness again in 1954 in other proceedings before the McCarran Act Board; and he was the main witness in the court proceedings (1952) that resulted in conviction of the Mine-Mill Union official Clinton Jencks.

In Matusow's triumphant days, when he was "a squalid liar" and a prize informer, he was Big Business' Model American Youth. He was "a great American" as Senator McCarthy told him in a personal letter; he was a consultant for the U.S. Department of Justice, for the *New York Times,* for the Superintendent of Education of New York City, for the President of Queens College, for

the Police Commissioner of New York City. When he arrived in Wisconsin, the Governor of that State personally greeted him; principals of high schools vied with each other to get Matusow as a speaker for their students; he appeared many times as a featured "expert" on radio and television programs from coast to coast; he wrote serials for Hearst; he was a featured lecturer for the American Legion—all this after the FBI says it knew he was "a squalid liar"!

Eleanor Bontecou, in her study of *The Federal Loyalty-Security Program* (Cornell University Press, 1953), remarks that in general the testimony of paid informers and professional anti-Communist witnesses "must always be viewed with some skepticism." Concerning the paid informers she continues:

> A dramatic example of the unreliability of members of the latter class occurred recently [in 1952] when a regular informant for the Central Intelligence Agency, classed by the Agency as "generally reliable," admittedly made a completely false report to the effect that Owen Lattimore was preparing to leave the country secretly in order to visit Russia. . . .

Elmer Davis, in his *But We Were Born Free* (1953), remarked on "the discrepancies in testimony" issuing from such stellar witnesses as Louis Budenz, Elizabeth Bentley and Joseph Kornfeder; he found them possessed of "inventive imaginations" and "self-refreshing recollections." Harold Taylor, when president of Sarah Lawrence College, stated—in his book *On Education and Freedom* (1953)—that from his own personal knowledge the statements of the anti-Communist "experts" concerning conditions in American universities were shot through with falsehoods.

The National Association for the Advancement of Colored People, at its 1955 Convention, adopted this Resolution:

> The Government in its security-loyalty cases is relying too much on paid professional informers. The Federal Government's use of such informers is odious and we condemn it. Their use is especially vicious *because again and again these informers have been proven to be perjured and utterly unreliable.*

Certain of the informants and witnesses used by the Government in sedition and Smith Act cases were shown to be chronic alcoholics and mentally ill people with records of institutional confinement—as Matt Cvetic of Pennsylvania, for example. Others admitted under cross-examination to such amoral behavior as to reveal themselves as ethical monsters; thus, two Government witnesses in Ohio Smith Act cases—John V. Blanc and William Cummings—testified that they had themselves recruited people into the Communist Party—*including their own relatives*—and had then reported their names to the FBI!

Of Louis Budenz—a chief witness in several Smith Act cases and in the McCarran Board hearings on the Communist Party—Senator Dennis Chavez of New Mexico said on the Senate floor, May 22, 1950, that he "could pass no test of credibility" and that, "I think everything he said is false. . . . He doesn't care whether his testimony was true or false." The very conservative newspaper columnist Joseph Alsop, writing on "The Strange Case of Louis Budenz," in *The Atlantic Monthly* (April, 1952) and having in mind Budenz' sworn testimony before the Senate Internal Security Committee, then chaired by McCarran, found that testimony marked by "remarkably long lapses of memory," by "queer uncertainties" and by "memory's sudden recovery" at opportune moments. Alsop here discusses at length a matter of which he had the closest personal knowledge involving the behavior of Professor Lattimore and John Carter Vincent of the State Department, affirms positively that Budenz' story was contrary to the truth and urges that the Department of Justice indict Budenz for perjury. Alsop closes his article with this paragraph:

> A man is called a Communist, with no proof offered. He proves, in answer, that he has in fact behaved in an intensely anti-Communist manner. Yet the accusation is allowed to stand. If these rules are generally adopted, the informers may be coming, one fine day, for you, and you, and you, and me.

Alsop in this article refers to "the bitterly prejudiced McCarran," which completes the *dramatis personae*—a chief witness for and

the chief author of the Act whose nature and impact we are considering.

One may conclude this examination of informers and spies insofar as they are connected with the Smith Act and the McCarran Act by offering an excerpt from the Record in the hearings before the Subversive Activities Control Board involving the Communist Party. Here the witness is Benjamin Gitlow, along with Louis Budenz the chief reliance by the Government among professional anti-Communist witnesses. Gitlow, expelled from the Party in 1929, has spent the ensuing years testifying and lecturing about the "Communist menace."* Examining Gitlow before the McCarran Board, in the extract that follows, was the late Vito Marcantonio, formerly a Congressman from New York City:

> Q. Now, speaking about the period during which you were a [Party] member—and I am not going beyond that—would you not say that the Communists have given vitality and force to the issue of industrial unionism, without which the organization of the mass production industries would have been impossible?
>
> A. They did not.
>
> Q. Would you not say that it was the Communists, more than any other force, that have instilled the American workers with trade-union consciousness, by raising in the unions the issue of the organization of the unorganized workers, that the Communists have been responsible for bringing millions of workers into the trade unions?

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* It was Benjamin Gitlow who testified under oath before the House Un-American Activities Committee in 1954 that the Methodist Federation for Social Action was "a Marxist organization." On that same occasion he named as members of the Communist Party or as "collaborators" with the Party nine Ministers and Rabbis. Among those "fingered" by Gitlow was the Rev. Irwin St. John Tucker who thereupon remarked that he had voted Republican since 1932 and who reminded the Committee that he had been the Protestant chaplain at the Republican National Convention in 1944. Among the Rabbis mentioned by Gitlow were two then safely dead, Stephen S. Wise and Jonah L. Magnes. The American Jewish Congress denounced Gitlow's testimony as "a contemptible and vile desecration of two of the most noble and revered names in American Jewish history."

A. They were not.

Q. Would you not say that by raising the legitimate political issues in the unions, the Communists have been responsible for broadening the organized workers' political outlook?

A. They never raised a legitimate political issue in the unions.

Q. And would you not say that the Communists have developed new streamlined strike techniques and methods for organizing workers on an industry and nationwide scale?

A. They developed new methods of strike strategy and tactics which were foreign to the American trade unionists.

Q. All right. Did you write this book, *The Whole of Their Lives?*

A. I did.

Q. What was the date of that writing, again?

A. 1948.

Q. I now read from page 105 of your book and I ask if you made this statement: "American trade unionism owes much to the Communists. The Communists have given vitality and force to the issue of industrial unionism without which the organization of the mass production industries would have been impossible. The Communists more than any other source have instilled the American workers with trade-union consciousness. By raising in the unions the issue of the organization of the unorganized workers, the Communists have been responsible for bringing millions of workers into the trade unions. By raising legitimate political issues in the unions, the Communists have been responsible for broadening the organized workers' techniques and methods for organizing workers on an industry and nationwide basis." Did you make this statement?

A. I did.

Attacks upon the informer system have led the Justice Department to ascribe them to a "Communist effort" but the record established to the full and without any doubt, as the *New York Times* said editorially in commenting on Matusow's book, that the Department has been guilty of the "repeated use of totally unreliable paid professional informers." It is such testimony that forms the bulk of the matter used to convict in Smith Act cases—including

the *Scales* case—and of the record upon which the McCarran Board based its findings. It is this testimony, too, that fills the hearings and Reports of the House Un-American Activities Committee and the Senate Internal Security Committee, upon which Justice Frankfurter based his affirmation of the constitutionality of the registration section of the McCarran Act.

Let us turn, now, to an examination of those Committees, and of some of the key personnel constituting them in the "more than a decade and a half" to which, with such gravity, Justice Frankfurter referred.

CHAPTER VII

"Un-American Committees" and "Hog-Wild Incompetents"

The House Un-American Activities Committee began in 1938 as a temporary committee. It was the brain-child of Martin Dies, the notoriously reactionary Congressman from Texas; from 1938 through 1944 he was its Chairman and often the sole member of the Committee in attendance at its Hearings. Its intellectual level was well indicated by its Chairman; it was approximately at the height—or depth—of Elizabeth Dilling—its favorite author—and the American Legion and the United States Chamber of Commerce, among the few organizations that Martin Dies did not attack.

During the six years of Dies chairmanship, the Committee was universally considered, in the words of Professor David Riesman, written in 1942, "a blind for attacks on liberals."

In 1945, when it appeared that the Committee's life would not be renewed, it was made into a Standing Committee of Congress through a parliamentary ruse carried out by John Rankin of Mississippi. These two Congressmen—Dies of Texas and Rankin of Mississippi—among the most backward, racist, and non-representative Representatives in the history of the American Congress—are responsible for calling into being and continuing the existence of the House Un-American Activities Committee. So foul are the views of these men that one hesitates to quote from them at all, but in the interests of documentation one may hazard a few gems

from the mouth of Mr. Rankin. In the *Congressional Record* of February 13, 1950, for example, one finds characteristic ravings from Mr. Rankin:

> Remember Communism is Yiddish. I understand that every member of the Politburo around Stalin is either Yiddish or married to one, and that includes Stalin himself. They have murdered more white Christians in the Ukraine in the last thirty years than have been killed in all the rest of the world since the crucifixion.

This kind of demoniacal ranting—reminding one of the worst from Julius Streicher or George Lincoln Rockwell—formed the essential intellectual outlook of that man who, more than any other single figure, was responsible for prolonging the life of the Un-American Activities Committee and giving it its present status as a Standing Committee in Congress.

Professor Robert Cushman of Cornell said of this Committee that it was "embarked upon a systematic campaign to suppress freedom of political and economic opinion"; of that Committee, the editors of the *Columbia Law Review* said it "may itself be labelled 'un-American' " and it is "too dangerous to be continued." Professor John W. Caughey of the University of California, studying the record compiled by this Committee, wrote, in 1958:

> In the light of the flimsy, immaterial, contradictory, prejudiced, and unverified character of so much of the testimony presented to the Dies committee, its successors, and its imitators, it is fantastic that unevaluated extracts therefrom should carry weight.

Weight enough to influence decisively a Supreme Court decision of enormous consequence!

Universally acknowledged as the definitive study of the subject is that made by Robert K. Carr, professor of law at Dartmouth; it was published by Cornell University Press in 1952 and is entitled *The House Committee on Un-American Activities, 1945-1950.* Professor Carr affirms, in the first pages of his book, his own deep anti-

Communist views; on that basis he thinks it possible that the Un-American Activities Committee, insofar as it has intensified anti-Communist feelings, may have done some "good." But, he writes, whatever good the Committee may possibly have done is decisively "outweighed by the bad."

He notes that the Committee may be given a "major share of credit for the enactment" of the McCarran Act, but of that Act Professor Carr writes: "Informed and impartial persons believe that it is an ill-considered statute, many of whose provisions seriously endanger our fundamental freedoms." On the whole, finds Professor Carr—as Professor Riesman before him—the Committee has lent itself at least as much to attacking the New Deal as it has to attacking Communism; it has gone out of its way "to emphasize the charge of wrong-doing on the part of important New Deal officials."

Professor Carr's specific indictments of the Committee, substantiated by a 400-page documented study, include: It

> "has created an exceedingly serious threat to the Anglo-American concept of criminal justice."
>
> "must be held responsible for having encouraged a widespread witch-hunting spirit both in government and in private life. . . . McCarthyism would never have been possible had not the Un-American Activities Committee, and its predecessor, the Dies committee, paved the way from 1938 on."
>
> "has played a part in the demoralization of the federal service brought about by the emphasis in recent years upon loyalty testing."
>
> "[has been characterized by] grossly unfair procedures, by the antics of its members, by its highly prejudicial findings. . . ."
>
> "has provided an opportunity for certain of the most incompetent and thoughtless members of Congress to run hog-wild and to obtain almost unlimited publicity for their irresponsible acts. . . ."
>
> "has adversely affected the moral and intellectual atmosphere of the nation."

Professor Carr adds: "It may be doubted whether the Senate Judiciary Committee under the chairmanship of Pat McCarran is

in any sense to be preferred to the House Un-American Activities Committee."* Since Senator McCarran's death in 1954, Senator Eastland of Mississippi has been this Committee's Chairman; it is safe to assume, I think, that Professor Carr would agree that Senator Eastland represents no improvement over Senator McCarran.

These House and Senate Committees, their Hearings and their Reports, we repeat, constitute the documentation—and the only documentation—offered by Justice Frankfurter, and taking up almost all of page 91 of his opinion, to substantiate his key sentences: "It is not for the courts to re-examine the validity of these legislative findings [in the McCarran Act] and reject them. They are the product of extensive investigation by Committees of Congress over more than a decade and a half."

The two Senators, from the two sides of the aisle, who were among the most influential in creating the McCarran Law were the Democrat McCarran, from Nevada, and the Republican William E. Jenner, from Indiana. Some idea of the political thinking of these two solons will be relevant to the "wisdom," at least, of the law they fathered and five members of the Supreme Court found not unconstitutional.

McCarran's name is "immortalized" not only in the Law directly under consideration in this volume; he will be remembered also as the author of the "McCarran Amendment" to the Marshall Plan, an amendment adopted in September, 1950, when the McCarran Act became law. By this Amendment, despite the tepid protests of the Truman Administration, the United States Government "lent" sixty-two million dollars to Franco Spain—a form of government that consistently won Senator's McCarran's lavish praise. The McCarran-Walter Naturalization and Immigration Law is another monument to the Nevada statesman—a law containing the harshest restrictive and punitive provisions against aliens in American history and one marked by the crassest kind of Nordic racism.

* Here is the view expressed in a *New York Times* editorial, October 20, 1951: "It would take a Geiger counter of more than ordinary delicacy to detect any radiations of enthusiasm for the basic freedoms or passion for fair play in any committee room dominated by Patrick A. McCarran."

With this background, it may be expected that Senator McCarran, in his day, was one of the leading beaters of the drums of war. "There is one thing you want to remember," he insisted in 1951, "there is no compromise between Communism and democracy. Nothing can stop the Reds except war. That is my view and the view of many of us. I hold that view very, very seriously. Nothing will stop them except bullets, and the sword and the bayonet" (quoted by Robert S. Allen, in *The New Republic*, Sept. 17, 1951).

Senator Jenner, in September, 1950, while heatedly—not to say hysterically—arguing for the passage of the McCarran Bill over President Truman's veto, said:

> The awful casualty lists and heroic deaths of American G.I.'s . . . had been sacrificed on the bloody altar of power politics and treason—not to win the war for America—but to destroy the only two powers able to stop the advance of communist conquest. This meant that American G.I.'s were . . . betrayed by their own chief of staff [*i.e.*, General Marshall] and used for advancing the cause of communism across the earth.

Could one find anywhere clearer statements of a call for World War III and of affinity for fascism than in these sentences from McCarran and Jenner, the Repubocratic progenitors of the McCarran Act of 1950? The last passage from Senator Jenner brings us to the "Twenty Years of Treason" charge hurled against the Democratic Administrations of Franklin Delano Roosevelt and Harry S. Truman. It brings us also to the subject of who defines "Communism" while a policy of anti-Communism is being conducted. With "active membership" in the Party declared to be a crime, and with "Communist-action" and "Communist-front" organizations subject to registration (if the June 5th decision is upheld), this question of definitions of "Communism" and the character of the definers takes on enormous consequence, not only for actual Communists but for any American who ever has had or ever may have a thought or an idea concerning economic, political, social, ethical, and historical matters. Let us now turn to this problem.

CHAPTER VIII

Defining Subversion: From Anti-Communism to Anti-Liberalism

The scene is the House of Representatives of the U. S. Congress; the year is 1843. Slavemasters dominate the two-party system and control Congress. John Quincy Adams—"Old Man Eloquent"—is a Representative from Massachusetts. His constituents have instructed him to present, as a petition to the Congress of the United States, the Declaration of Independence, and that body refuses to allow him to do so.

The Declaration of Independence falls under the ban of the "gag rule" adopted in 1836 by the House—a rule which required that any petition having an anti-slavery "tendency" was not to be received or referred, but was rather to be tabled at once. And when the former President of the United States began to read Jefferson's immortal manifesto of revolution in the House, shouts resounded through the halls of Congress—"Gag!" "Gag!"

So the Declaration of Independence was thrown into the trash basket by an American Congress! When the Abolitionists had denounced the enslavement of the Negro people, they were greeted by the "respectability" with hoots, slanders, and stones. Many people, misled by ruling-class propaganda, said: "These Abolitionists are rabid fanatics, and their leaders are treasonous agents of Great Britain." And many added: "Besides, of what concern to us is the enslavement of these Negroes far away on some Alabama or Mis-

sissippi plantation?" On these grounds, the civil liberties of the Abolitionists were daily violated and serious consideration of the basic question of human slavery—a matter of the greatest importance in terms of national welfare and elementary justice—was postponed or camouflaged behind witch-hunting charges of "alien conspirators" and "treasonous plotters."

The Abolitionists warned that the social and economic questions they raised needed the most serious and the most free debate exactly because they were so momentous and fundamental; they warned that the importance of the freedoms guaranteed in the Bill of Rights was of major consequence only insofar as they protected uninhibited examination of the most "delicate" and the most explosive questions; of course, for those questions generating no heat and no excitement and no sharp differences there would be no real need for the protection of the freedom of speech, press, association, and assemblage.

Furthermore, they correctly warned that if the rights of the Abolitionists were violated, the rights of no American would be safe, because it was the slaveholders who took the lead in attacking the Abolitionists and therefore it would be the slaveholders who determined what had an "anti-slavery tendency" and what might or might not be permitted. So it turned out. Finally, even the Declaration of Independence when read in the halls of Congress caused Representatives to scream "Gag!" and caused insults to be rained upon the aged head of a former President. And that "gag-rule" not only deprived that former President of his capacity to function fully as a Representative; it, at the same time, robbed thousands of citizens of Massachusetts, not one of whom was a slave, of their own freedom to petition.

Let it be added that while the slave owners were corroding the Bill of Rights, on the grounds that "traitors" and "agitators" were taking "advantage" of its liberties, those slave-owners themselves were soon to take the path of real treason, and openly resort to a violent effort to overthrow the American Republic—urgently seeking, in this effort, the assistance of reactionary European governments.

It is not necessary today to believe that Communists are as noble

as or less ignoble than the Abolitionists of a century ago, to see that the lessons of that struggle show that the denial of civil liberties to one group on the grounds of alleged "fanaticism" or subversion or treason results inevitably in the corrosion of the liberties of all. In the first case it was the slaveholders who defined abolitionism; in the present case, it is the McCarthyites and McCarranites, it is the likes of Dies, Rankin, Eastland and J. Edgar Hoover, who, in actual fact and in actual practice, define communism. In both cases the fear extended to all liberalism; what was and is anathema to these groups and personalities are not only the ideas of the Bolshevik Revolution, but the ideas of the American and the French Revolutions—ideas which are organically connected, in any case—favoring fraternity, equality, liberty, popular sovereignty, security, and opposing racism, monopoly, colonialism, and eliteism.

Let us see if the record of our own times and our own land does not bear this out. We start with the problem of subversion: how to define it and who applies the definition.

Attorney General Robert H. Jackson—later Supreme Court Justice—at the Annual Conference of U.S. Attorneys, April, 1940, said:

> Activities which seem benevolent and helpful to wage-earners, persons on relief, or those who are disadvantaged in the struggle for existence may be regarded as "subversive" by those whose property interests might be burdened or affected thereby. Those who are in office are apt to regard as "subversive" the activities of any of those who would bring about a change of administration. Some of our soundest constitutional doctrines were once punished as subversive. We must not forget that it was not so long ago that both the term "Republican" and the term "Democrat" were epithets with sinister meaning to denote persons of radical tendencies that were "subversive" of the order of things then dominant.

Even when, however, one gets a definition of "subversive" that may appear to be thoroughly objective, the application of the definition in life takes on a far from objective character. This is a matter of actual experience, not abstract theory. In 1943, the House Un-American Activities Committee decided to draft as objective

a definition of subversion as they could construct. It read this way: "Subversive activity derives from conduct intentionally destructive of or inimical to the Government of the United States—that which seeks to undermine its institutions, or to distort its functions, or to impede its projects, or to lessen its efforts, the ultimate aim being to overturn it all."

On the face of it, this might be considered a definition that was as near to being unobjectionable as could be devised, once one enters this very sticky area of defining "subversion." But how was that definition applied, for it was applied, at the recommendation of that very Committee, that very year, by an act—or, more exactly —an amendment to an act passed by Congress? It was applied by Congress placing a rider to the Appropriations Bill for that year directing that no money be paid three named public servants: Robert Morss Lovett, Goodwin Watson, and William E. Dodd, Jr. Out of the then three million people in federal employ, these three individuals were selected by Congress, acting under the above definition of "subversive," as unworthy of receiving their salaries, because of "subversive" tendencies. The first two were senior scholars, in the areas of literature and psychology, of pre-eminent position within the American academic and professional community; the last named was a young and talented historian, who was the son of Franklin Delano Roosevelt's choice for Ambassador to Germany. Ultimately, this gross piece of legislative injustice was undone by the U. S. Supreme Court—back in 1945, prior to the frigid blasts of the Cold War; but the point is that here is an actual case of the application of subversiveness on the basis of a quite objective definition of the awful and slippery thing, and it was an application which shamelessly and illegally (as the Court found) penalized three non-Communist scholars and useful patriots.

Normally, definitions have been less painstaking and applications more unjust than was true in the Lovett-Watson-Dodd case. FBI experts submitted the following definition of a "Marxist" in 1950 to the Senate Appropriations Committee:

> One who follows the principles of Marxism and applies them to a solution of economic, social and political problems.

> The principles of Marxism involve a materialistic explanation of human existence and relations, the overthrow of Governments and economic systems based upon free enterprise and private property, and the ultimate creation of a godless, classless, and stateless world.

J. Edgar Hoover himself, in the *American Legion Magazine,* November, 1957, wrote: "Scores of individuals who have never been members of the communist organization contribute to the spread of the philosophy of materialism. Among these philosophic materialists are numerous educators, authors and lecturers."

These definitions, quite apart from the appalling ignorance they reflect of the history of philosophy, clearly tend to equate a particular philosophic school—which goes back thousands of years—with subversion; they do the same with various theories of atheism and anarchism and equalitarianism. Further, they tend to label as subversive anyone whose views of the dominant economic system in the United States would preclude considering it a model of "free enterprise" and would see it, rather, as marked by a high degree of monopolization, price administration, cartelization and other clear evidences of the demise of "free enterprise."

It is, then, not surprising that two scholars making a study of *The American Right Wing,* for the Library School of the University of Illinois,* find not only that, to the Right, Communism is Satanism but that "Liberalism, then, is Satanism and it is also . . . treason." The authors continue: *"This double identification has been largely accepted by the Congressional committees which have investigated American Communism, and certainly by J. Edgar Hoover in most of his speeches and publications,* though there is some tendency to soften the accusation by referring to liberals as dupes rather than traitors, or else as pseudo-liberals." (Italics added.)

Since all witch-hunting is demoniacal, sheer madness permeates

* This is Occasional Paper No. 59 of that School; its authors are Ralph E. Ellsworth and Sarah M. Harris. The paper was prepared as a Report to the Fund for the Republic in November, 1960.

many of the features of so-called anti-Communism in the United States. Thus, here is a representative paragraph from a booklet entitled *How to Spot a Communist:*

> Even a superficial reading of an article written by a Communist or a conversation with one will probably reveal the use of some of the following expressions: integrative thinking, vanguard, comrade, hootenanny, chauvinism, book-burning, syncretistic faith, bourgeois-nationalism, jingoism, colonialism, hooliganism, ruling class, demagogy, dialectical, witch-hunt, reactionary, exploitation, oppressive, materialist, progressive.

Again, one's natural tendency to smile at such lunacy is brought up sharply when he learns that this booklet was published in 1955, as an official manual by the Continental Air Command and the First Army, and only finally withdrawn after numerous attacks, including a derisive editorial in the *New York Times.*

Here is another example of this sort of thing. A man is testifying under oath:

> Swarms of state interventionists have been injected or absorbed into the agencies having to do with our foreign operations. Behind them in the wings, developing and pushing plans, infiltrating not only our political structures but education, the press and elsewhere, exists an unidentifiable but nonetheless effective "THEY."
>
> Here is where we may expect to find the dangerous communists and traitors. "THEY" are diabolically ingenious and effective in both plans and methods. The state interventionists and "do-gooders" often turn out to be the puppets who can be juggled by "THEY." If the United States and, therefore, civilization are to survive, this anonymous "THEY" must be rendered impotent.

But, again, this is no joke. This is Spruille Braden, formerly Assistant Secretary of State, testifying before the Senate Internal Security Committee; the testimony was reprinted in full in *U. S. News & World Report* (April 9, 1954), one of the most influential mass-circulation magazines in the country.

One of the leading "experts" on Communism, regularly consulted by the House Un-American Activities Committee, is one Dr. Frederick Charles Schwarz, Director of the Christian Anti-Communist Crusade. Dr. Schwarz has blossomed forth now, not only as a consultant for the Un-American Committee but as a contributor to leading American newspapers. Writing to parents in particular, in the *St. Louis Globe Democrat,* April 23, 1961, this learned one warns:

> An examination of some of the children's literature produced by the Communists induces bewilderment in most loyal Americans, for they can discover nothing wrong with these books. The stories are well told, beautifully illustrated, and do not teach Communism in any way. The trouble with these books is that there is nothing wrong with them.

Schwarz' Crusade has headquarters in Long Beach, California; it maintains permanent offices also in San Francisco, Houston, Philadelphia and in Sydney, Australia. According to Philip Horton, writing in *The Reporter* (July 20, 1961), this "Crusade"— a tax-free organization—took in $63,000 in 1957; $115,000 in 1958; $380,000 in 1960. Dr. Schwarz says he expects to take in over a million dollars in 1961. He has lectured before the staff of the Un-American Activities Committee, the National War College, the Texas State Legislature, and at many naval and air bases in the United States.

It was this Dr. Schwarz who assured the Un-American Committee, on May 29, 1957: "I believe that paranoia is at the heart of communism" and that to think the United States might be able to negotiate fruitfully with the Soviet Union shows "a failure to understand communism so completely that it approaches mental illness."

These are the experts before the very Committees cited by Justice Frankfurter as constituting authoritative findings as to the nature of Communism; these are the Committees whose Reports and whose members were mainly responsible for concocting the Smith and the McCarran Acts. And the substance of the concepts and definitions

of "Communism" as contained in such testimony and in the Reports based on such testimony* found distillation in the definitions of Marxism-Leninism integral to Smith Act prosecutions and in the "findings" about Communism that form the core of the McCarran Act and that Justice Frankfurter insists are not subject to review, either by the Board created by the Act, or by Courts examining the work of that Board.

Alas, however, our own country has had much experience since World War II, in the actual functioning of measures passed or undertaken in the name of the "Communist menace." There is, for example, the entire record of the enforcement of the Loyalty and Security orders of Presidents since Harry S. Truman initiated this undertaking in 1947. Walter Gellhorn, Professor of Law at Columbia University, in a study of *Security, Loyalty and Science* (Cornell University Press, 1950), wrote of this experience:

> The programs are candidly directed at Communists, who are regarded as the disciplined tools of a foreign power. *But the inquiries the Government pursues go far wide of their mark. Effectively, if unintentionally, the focus upon opinion as a measure of loyalty tends to discourage the holding of any opinion at all.* (Italics added.)

Eleanor Bontecou, in her already cited volume, which is widely considered the definitive study of the federal "loyalty" program, after studying hundreds of actual "cases" heard by the Federal Boards, reported that "derogatory information" was found to "include views on racial relations, marriage, religion, sympathy for

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* The present writer assures the reader that the examples he has cited are by no means the most "sensational." Thus, in volume 9 (1939) of the Reports of the Un-American Activities Committee, there is a long affidavit submitted by Kenneth Goff, director of Soldiers of the Cross, who claims to have been a "leading Communist," explaining how fluoridated water was used as a "tranquilizer" of the Russian population, and how teachers in a Communist school explained that fluoridation of water in the United States "would bring about a spirit of lethargy in the nation" and thus facilitate "a steady encroachment of communism."

Russia or its people, partisanship on the side of labor, criticism of the House Un-American Activities Committee, the contribution of articles to radical publications regardless of the content of such articles, and the parking of one's car in the neighborhood of a Communist-front meeting."

In actual cases, it was held to be damaging to one's reputation for "loyalty" if one was found to have been a reader of *The New Republic* or to have in one's library Edgar Snow's *The Pattern of Soviet Power,* published by Random House, or Edward Hallett Carr's *Soviet Impact on the Western World,* published by Macmillan. Guilt was frankly based upon the holding of "dangerous thoughts" and the determination of the "danger" explicitly followed the process of guilt through thought-association. Thus, the Chairman of a Federal Loyalty Board said to Professor Gellhorn: "Of course, the fact that a person believes in racial equality doesn't *prove* that he's a Communist, but it certainly makes you look twice, doesn't it? You can't get away from the fact that racial equality is part of the Communist line."

It is a matter of universal knowledge and common notoriety that in the past fifteen years—largely on the basis of these kinds of tests, and many even more loose—thousands upon thousands of Americans have been severely victimized; hundreds have been jailed, teachers have been dismissed, lawyers disbarred, clergymen unfrocked, actors fired, scientists refused clearance, citizens denied passports, union officials forced to resign, housewives removed from offices in Parents and Teachers Associations, a mother denied custody of her own child, people penalized because of the alleged beliefs or associations of their parents or their children, Robin Hood denounced, Hiawatha not filmed, the Girl Scout Manual withdrawn and issued in censored and altered form, Lysistrata banned, and books removed from library shelves and, in some cases, actually burned, and their authors included John Steinbeck, Lillian Hellman, Herman Melville, Ernest Hemingway, Langston Hughes, Robert S. Lynd, Mark Twain, Norbert Wiener, Mark Van Doren, Thomas Mann, Albert Einstein, and dozens more, including even a few actual Communists!

There was a Roman Emperor who considered destroying the

writings of Homer and Virgil and Livy. Homer, he said, was an uninspired versifier, Virgil of little talent and less learning, and Livy a verbose and careless historian. Posterity's verdict is somewhat different from that of the Mad Caligula. It is possible that the books distasteful to these "loyalty boards" and "investigating committees" will likewise find different evaluations in the future as, indeed, they already have from not a few contemporaries. The most important thing now, however, is that these attacks, and the standards behind them—with everything being done in the name of wiping out Communism—are part of a pattern, of a policy, whose ultimate goal, whose innate logic, is fascism. Similar activities in Germany, a generation ago, were then, too, part of a policy, as Thomas Mann warned in 1937, "to put the German people in readiness for the 'coming war' by ruthless repression, elimination, extirpation of every stirring of opposition, to make them an instrument of war, infinitely compliant, without a single critical thought, driven by a blind and fanatical ignorance."

How extensive are the actual plans of repression—all in the name of anti-Communism—also may be indicated in terms of announced plans and programs directly related to the Smith Act and the McCarran Act. As for the Smith Act, in the Spring of 1950, Raymond P. Whearty, then the Assistant Attorney General, testified before a House Committee on Appropriations that the Department of Justice was planning on the early arrest of 12,600 alleged Communists. Said Mr. Whearty:

> There is a program of extensive suits to prosecute members of the Communist Party who can be shown to be sympathetic and appreciative of its views. We prosecute them as individuals under the Smith Act. . . . If the Government is sustained in the Supreme Court of the United States, it will be about the fiscal year 1951 when that program will come up. That is the work load which we must look forward to as possible, indeed as probable.

Resistance and struggle postponed that program, and we are now not in 1951 but in 1961; the Department of Justice was proven

wrong ten years ago, it can be proven wrong again. But the point is that here are admitted plans for the jailing—under the Smith Act—of *twelve thousand six hundred people.* The slowness of success in the original program, then the *Yates* decision, and even now with the *Scales* decision—offset as that was by the *Noto* decision and tempered as it was by a bare 5 to 4 vote—has made the McCarran Act the favored weapon of repression. And under the provisions of that Act, "detention" camps—a euphemism for concentration camps—already stand built and ready for their first occupants, needing only a Presidential proclamation of "emergency" and the necessary action from the Attorney General's office.

This makes the practice of "listing" seditious and subversive organizations of portentous consequence. Here, again, as in the Smith Act plans of the Justice Department, one has official designations that convey some idea of the actual sweep of the so-called "anti-Communist" dragnet. In 1947, Attorney-General Clark (now a Justice of the Supreme Court) issued a list of over one hundred organizations that he thought were "subversive"; Attorney General McGrath pushed the total up to two hundred; Attorney General Brownell to two hundred and seventy-nine. As of November, 1950, the list compiled by the House Un-American Activities Committee came to six hundred and twenty-four; one year later, its list had grown to eight hundred and twenty-nine. At the 1960 hearings before the House Appropriations Committee, J. Edgar Hoover testified:

> We now have 155 known, or suspected Communist front and Communist-infiltrated organizations under investigation. . . . Supplemeting this group are some men and women who pretend to be interested in supporting measures to solve social, labor and general welfare problems. The truth is that such people are closely allied to subversive forces in this nation and are exploiting shamelessly, social, labor and welfare issues in carrying out their Communist Party line.

At the 1961 hearings before the same Committee, Mr. Hoover had somewhat expanded his list:

> Some two hundred known, or suspected Communist-front and Communist-infiltrated organizations are now under investigation by the F.B.I. Many of these fronts are national in scope with chapters in various cities. They represent transmission belts through which the Communist party furthers its conspiratorial designs.

We have already offered above certain evidence on the political and ideological outlook of this Mr. Hoover, and have seen that to him liberalism and communism are akin to Satanism. It may not be out of place at this point, where we have indicated the current extent of Mr. Hoover's list of subversive organizations—and he chose words identical with the language of the McCarran Act—to offer an example of an actual memorandum on subversion submitted by J. Edgar Hoover, in a letter dated November 14, 1940, to the Chairman of the National Labor Relations Board:

> I wish to advise you information has been received by this Bureau to the effect that Mr. . . . . , a field examiner connected with the National Labor Relations Board at . . . . . , is known to have radical tendencies towards Communism.
>
> It is further reported that . . . . . has studied anthropology and has been affiliated with the National Labor Relations Board for three years.
>
> It was also reported that . . . . . visited Mexico City, Mexico to observe the presidential election in July, 1940.
>
> The above information is submitted for your consideration and whatever action you deem appropriate.

Submitting to the Chairman of the National Labor Relations Board as evidence of "subversion" the employment of the suspect by the NLRB is only slightly more strange than citing the study of anthropology and an interest in Mexican presidential elections as possible "proof" of "radical tendencies."

This, however, is less appalling than the evidence cited against an employee of the Agriculture Department, Dr. Wolf I. Ladejinski, in December, 1954, which led to his dismissal. There were three charges: 1) he had been born in Russia; 2) he had relatives still

living in Russia; 3) over the preceding twenty years he had written many *anti*-Communist articles! The argument was actually insisted upon and accepted by the Loyalty Board as seriously impugning his loyalty, that the persistent publication of anti-Communist articles might very well have been a cover-up for Communist sympathies!

One used to think that such things were witnessed only by Alice in Wonderland. Remember the trial of the Knave of Hearts? The White Rabbit introduces a piece of paper on which some verses are written, as proof of guilt.

> "Are they in the prisoner's hand?" a juror asked.
>
> "No, they're not," said the White Rabbit, "and that's the queerest thing about it."
>
> "He must have imitated someone else's hand," said the King.
>
> "Please, your Majesty," said the Knave, "I didn't write it, and they can't prove that I did: there's no name signed at the end."
>
> "If you didn't sign it," said the King, "that only makes the matter worse. You *must* have meant some mischief, or else you'd have signed your name like an honest man."

* * *

Generally it has been proven true by the experience of all peoples for the past several generations that the policy of anti-Communism hides an assault upon all democratic, progressive and liberal aims and tendencies. We think that the evidence already offered—and more will be forthcoming in later pages—demonstrates that this has been true in our own country, too. But this assault always has particular national characteristics. Thus, in Germany, Hitler's demagogy was aimed particularly at capitalizing upon and ultimately destroying the German people's high regard for socialism. So, in the United States the main and the specific target of all the repressive agitation and terror has been the New Deal—its laws, its spirit, its diplomacy. This, in turn, moves out rather quickly to an attack upon the Democratic Party per se, as being itself a subversive and treasonous organization.

The truth of the existence of this effort to identify the New Deal and ultimately the Democratic Party itself with treason is shown in the very slogan of McCarthyism—"Twenty Years of Treason"—*i.e.*, that the years of the New Deal and the so-called Fair Deal were years when a traitorous gang, subordinate to the "world-wide Communist conspiracy," captured and misled and very nearly destroyed the United States. It will be useful to examine, briefly, something of the background and immense respectability of this kind of thinking.

One of the earliest expressions of this theme came from Joseph W. Martin, Republican Representative from Massachusetts, often Speaker of the House, and one of the most powerful politicians in the United States. On Lincoln's birthday, in 1948, via a nation-wide radio hook-up, Mr. Martin, then Speaker of the House (and next in line to the Presidency should Mr. Truman have died) said:

> The New Deal Administration knew full well the intentions of the Kremlin. We Republicans warned of the march of communism for ten or twelve years. We told the nation the Communists were sneaking into high government places. Now it is going to take a Republican administration to clean out the fifth columnists and traitors from the government structure. Those who insisted for years on keeping them will never do the job.

In his day even more influential than Martin, was Senator Robert A. Taft of Ohio. At the high point of his power, in February, 1949, speaking before the National Federation of Women's Republican Clubs, Senator Taft tried to theorize this political stance; he affirmed that "the fundamental cleavage" between the Republican and Democratic Parties was that between advocates of "free government versus totalitarian government." By 1951, Republican Senators were making the charge of treason against the Democratic Party as explicit as possible. That year, on April 11, to be exact, on the floor of the Senate, William Jenner of Indiana said:

> We are not being governed by the Democratic Party. We are not being governed by the Fair Deal. I charge that this

> country is in the hands of a secret inner coterie which is directed by agents of the Soviet Union. . . .
>
> We must cut this whole cancerous conspiracy out of our government at once. Our only choice is to impeach President Truman and find out who is the secret invisible government which has so cleverly led our country down the road of destruction.

This, of course, was the essence of Senator McCarthy's line; his one notable addition was to insist that the Chief of Staff of the United States during World War II, General George C. Marshall, was the top traitor of them all and the real brains of the "conspiracy." This was the theme of his book, published in 1952, *The Story of General Marshall.*

By the campaign of 1954, this charge against the Democratic Party was the main content of the speeches of Vice-President Richard M. Nixon. He regularly, then, insisted that the Democratic Party was "Communist-infiltrated" (the language of the McCarran Act, by the way), and that there was "a Left-wing Democrat, ADA, and Communist conspiracy to elect an anti-Republican Congress."

Now, with the return to office of a Democratic Administration, the Republican hierarchy is reiterating the charge. On June 8, 1961, the National Committee of the Republican Party denounced President Kennedy for his undertaking negotiations with Premier Khrushchev and said it feared that he was "returning" to the "sell-out" pattern of President Roosevelt. And, upon news of the death of Whittaker Chambers, former Vice President Nixon issued a statement hailing his "courage" and "inspired eloquence." Mr. Nixon went on to add:

> His book, *Witness,* is the most penetrating analysis of the true nature and deadly appeal of communism produced in this generation. It should be required reading for every American who is concerned by the threat of communism.

It is of this book that Charles Alan Wright, professor of law at the University of Minnesota, wrote: "After reading the book, I am convinced that Mr. Chambers is the author of one of the longest

works of fiction of the year. . . . On close examination it becomes obvious that the author is not a detached teller of truth but rather a pitchman seeking to put across a bill of goods." (*Saturday Review,* May 24, 1954.)

The theme of this fiction and its main "pitch" is that Marxism is the logical culmination of all liberal and democratic thought; that there is a direct line from the American Revolution to the French Revolution to the Russian Revolution. In this Chambers is correct, but what he makes of it all—of all modern history—is one vast secular plot—what he calls "materialism," very much as J. Edgar Hoover does. He sees man's original sin to be the idea that life is reasonable, that life is manageable, that through reason and effort it is possible to build on earth a decent and humane and rational society. Chambers' *Witness* is, in fact, one long diatribe not so much against Marxism as against the Declaration of Independence. These ideas are what Chambers calls "the treason of ideas."

These ideas, Chambers insisted, were "shared by millions who are not Communists (they are part of Communism's secret strength)." Those millions consist of "those miscellaneous Socialists, liberals, fellow travelers, unclassified progressives and men of good will" who, while not joining the Communist Party, really carry forward its work. In fact, Chambers repeats McCarthy's "Twenty Years of Treason" thought, but in a somewhat more cryptic and elevated style:

> The simple fact is that when I took up my little sling and aimed at Communism, I also hit something else. What I hit was the forces of that great social revolution which in the name of liberalism, spasmodically, incompletely, somewhat formlessly, but always in the same direction, has been inching its ice-cap over the nation for two decades. . . . This is a statement of fact that need startle no one who has voted for that revolution in whole or in part. And consciously or unconsciously, a majority of the nation has so voted for years. It was the forces of that revolution that I struck. . . .

Read again, please, the appraisal of this book by the former Vice-President and the present titular head of the Republican Party.

Compare it with the views on the same subject expressed by the Chief of the Federal Bureau of Investigation. See, then, if what one does not have in the campaign aimed in the first place against the Communist Party—as highlighted by the Smith and McCarran Acts and the decisions of June 5, 1961—is not actually a campaign having as its ultimate goal the destruction of all democratic thinking. See if it is not true that clearly in the line of fire is not only the Communist Party but also the hundreds of organizations actually listed by the Attorney General's office and by the House Un-American Activities Committee, and see if it does not aim, ultimately, at the destruction of the Democratic Party itself—or the liberal sections of it—certainly insofar as that party carries with it any identification with or sympathy for the New Deal.

When the Nazis burned the books, in 1933, one of their "Youth Leaders" at the pyre acclaimed the act, shouting: "The world of rationalism, liberalism, humanism is dying." When Hitler himself later justified the intellectual lynching, he cried out: "The so-called Age of Reason, stamped with its characteristic liberal outlook, with its half-knowledge and half-culture, was in a fair way to breed a thoroughly unfit generation." When Goebbels marched into prostrate Paris in 1944, he exulted: "We must wipe out 1789!"

The assault upon Marxism and upon Communism always includes—as it must and as it intends—an assault upon rationalism, upon humanism, upon the basic components of Jeffersonianism. It is as clear as anything can be, from all the evidence and from the experience of mankind—in Germany, Italy, Spain, Japan, and in our own country since World War II—that if the Smith Act and the McCarran Act are allowed to stand, if the decisions of the Supreme Court of June 5th are allowed to prevail and are enforced, the first victims will be the Communists, but they will be the first and not the last. The final victim, if the process is not reversed, will be all vestiges of our democratic heritage; and the catastrophe will envelop our nation, as it did other nations which took this road and did not turn back in time.

CHAPTER IX

The "Big Lie" and the Plain Truth

The assumptions of the Smith Act, the "findings" of the McCarran Act rest upon the idea that Communism is a bestial and alien concept. The President of the United States, in his address, April 20, 1961, before the American Society of Newspaper Editors, denounced Communism in identical terms. On this basis, it may be recalled, the President promised that the strength of the United States would be dedicated, "regardless of the cost and regardless of the peril," to the task—unilaterally, if necessary—of seeing to it that the foreign, devilish theory and practice never gained ascendancy in any part of the Western Hemisphere.

Let us examine this view of Communism as horrible and "alien" —*i.e.,* as not only un-(North)American, but also un-Cuban, and un-Laotian, and un-Congolese; really, pursuing the logic to its full, as un-Human, not to say in-Human. It is relevant to note that this view of Communism is identical with the view on that subject held by Thiers, Bismarck, Mussolini, Hitler, Hirohito, Franco, Chiang Kai-shek, Al Capone,* and other "free-world" statesmen.

* It is likely the reader will require documentation for this statement only insofar as it mentions the pre-eminent American gangster. In *Liberty Magazine,* Sept. 14, 1938, Capone wrote: "Bolshevism is knocking at our gates. We cannot afford to let it in. We've got to organize ourselves against it and put our shoulders together and hold fast. We must keep the worker away from Red literature and Red ruses; we must see that his mind remains healthy."

The President, himself, is not too young to be able to recall the condemnations of Hitler's "Big Lie" that filled our Armed Forces "orientation" lectures and publications during World War II; but I'm sure that many of these lectures and publications turned the profound insight to be gained by understanding the content of that "Big Lie" into some more or less vague denunciation of Hitler as an awfully big liar.

What was *the* Big Lie of Hitler? The Big Lie of naziism was its depiction of Communism; it was not anti-Semitism, racism, eliteism. The latter were peripheral "adornments," the better to trap victims by *the* Big Lie. That—the Lie itself—was one which pictured Marxism, Socialism, Communism, as the incarnation of evil, as Satanic, as threatening civilization, and therefore concluded that any and all means were to be used for the destruction of this monstrosity. In particular, Hitler's Big Lie held, Communism, Socialism, Marxism was so awful that its threat to national security could not be tolerated; hence, it was something to be outlawed, extirpated. *That* was the main *content* of Hitler's Big Lie; on that basis, Jews—allegedly the carriers of Marxism—were to be annihilated; on that basis, democracy—allegedly the ally of Marxism—was to be suppressed; on that basis, trade unions—allegedly the creation of and the training ground for Marxism—were to be prohibited; and on that basis, the Soviet Union—lair of the Marxist monster—was to be destroyed.

The McCarran Act findings, and the President's recent speeches, not only make Marxism monstrous; they make of it something akin to a disease or a paranoia. Probably it is only possible for American politicians to take such a position, in this day and age, and not be hooted from the platform. With such an analysis, what shall one say of Italy, where almost two million belong to the Communist Party and where about half the population has voted, at every opportunity for the past fifteen years, for the Communist and Socialist Parties; or of Indonesia, where 1,600,000 are Communists; or of India, where 300,000 are Communists; or France, where 500,000 are and where over one-fourth of the population consistently votes for the Communist Party—all this quite apart from the Socialist countries themselves? What shall one do with the fact that

Communist Parties win decisive proportions of the votes in elections held in Greece, Ceylon, Finland, India and Indonesia, as well as in France and Italy, and that in 1960 the Communist vote grew by 50% in Sweden (from 129,000 to 190,500) and that in Japan 145,000 *more* people voted Communist in 1960 than had so voted in 1958? In fact, with the McCarran-Act analysis, what is one to do with the world, wherein today about *thirty-seven million people* are members of Communist Parties? I fear that the logical reply to this question—given the position which provokes the question—would seem to be: Destroy the World!

How is one to explain—if Communism is the loathsome thing that President Kennedy says it is—that many of the most penetrating and creative minds have embraced it? Not to leave this Western Hemisphere, and confining ourselves to Latin America, how can the President—or Justice Frankfurter—reconcile the McCarran-view of Communism as something awful and alien, with the fact that the greatest living artist of Mexico is a Communist, that the greatest living novelist of Brazil is a Communist, that the national poet of Chile is a Communist and that the national poet of Cuba is a Communist? All this is quite apart from whether one does or does not agree with Marxism.

If Marxism is the terrible thing that J. Edgar Hoover—as we have seen—insists that it is, how can one explain the fact that the greatest scholars produced in the United States have universally reported that they had found the works and the ideas of Marx to be immensely profound and marvelously illuminating? It is of Marx that John R. Commons—for nearly thirty years a professor of economics at the University of Wisconsin—wrote he "was one of the three or four greatest minds who have contributed to the progress of economic science"; it is of Marx that James Harvey Robinson—professor of history for thirty years at Columbia University—wrote, he "suggested a wholly new and wonderful series of questions which the historian might properly ask of the past, and moreover furnished him with a scientific explanation of many matters hitherto ill-understood"; it is of Marx's philosophy of history that E. R. A. Seligman—for forty-five years professor of economics at Columbia University and past President of the American Eco-

nomic Association—wrote: "it will deserve well of future investigators and will occupy an honored place in the record of mental development and scientific progress"; it is of Marx that Albion W. Small—founder of the Department of Sociology at the University of Chicago and founder and editor for many years of the *American Journal of Sociology*—wrote that he "was one of the few really great thinkers in the history of social science . . . in the ultimate judgment of history, Marx will have a place in social science analogous with that of Galileo in physical science. . . ."

To repress and outlaw the ideas of Marx—and to do this in the name of decency and democracy—of a Galileo in the social sciences, of a mind which ranks among the three or four greatest, of one who was a pioneer blazing new and promising paths in the record of human thought (to paraphrase Small, Commons and Seligman), to do this—in such an ostensible cause—is to deceive the American people and to bring upon the name of our country the scorn of all enlightened mankind.

Most important, by violently distorting the true nature of Marxism and communism, the Big Lie gamesters create the favorable atmosphere to carry through their war preparations, justify their enormous armament expenditures, the stepping up of the cold war and the repression of civil liberties in the country. That is the severe danger of the Big Lie—of the McCarran findings with their bestial and alien concepts of communism.

* * *

Americans have been told very little about the realities of nazi history. Had they a firmer grasp of that history—I make so bold as to say, if the President and a majority of the present U. S. Supreme Court had a firmer grasp of that history—they would better understand that the path of anti-Communism is the path of anti-democracy and national disaster.

When Hindenburg appointed Hitler Chancellor, early in 1933—prior to a nazi majority in the Cabinet—the first proclamation of the new Chancellor, issued February 1, 1933, was one denouncing the Communist Party. The proclamation justified this act in these

words: "If Germany is to live and see this political and economic recovery, and if she is conscientiously to fulfill her obligations towards the other nations, one decisive act is required: to overcome the disintegration of Germany by Communism."

For many Germans—too many—the aim of outlawry seemed proper, among other reasons because: *"The Supreme Court had frequently enunciated that the Communist Party was illegal in its aims, that it was preparing for the overthrow of constitutional government by violence, and that its plans were sufficiently substantiated to justify outlawing the party whenever the government should choose to do so."**

New elections were set by Hitler for March 3, 1933; on February 27 the nazis burned the Reichstag, let loose a reign of terror, but *still did not get a majority in the election.* Charging, however, that the Communists had burned the Reichstag, the Party was officially outlawed, and all Communist deputies were arrested or otherwise barred from the Parliament; Hitler then had a full majority and proceeded with his "fulfillment"—in April the Social-Democratic headquarters were raided, its presses confiscated; on May 10, the Social-Democratic Party was illegalized.

All this, let it be reiterated, was done on the basis of the Satanic qualities of Communism; in Goebbels' words, Communism "was the most acute and deadly peril" that ever faced "the whole civilization of the West." Therefore, Goebbels insisted, its elimination was not a political question at all, but rather a police question—in Sidney Hook's streamlined phraseology, "Heresy, Yes, Conspiracy, No." Goebbels' exact words, uttered at the 7th Nazi Party Congress, in Nuremburg, were:

> There is no longer any political question at issue. This thing cannot be judged or estimated by political rules or principles. It is iniquity under a political mask. It is not something to be brought before the bar of world history but rather something that has to be dealt with by the judicial administration of each country.

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* Arnold Brecht, *Prelude to Silence: The End of the German Republic* (Oxford Univ. Press, N. Y., 1944), p. 84; italics added.

It is to be added that Goebbels called this Communism not only a poison, but an insidious poison. Its insidiousness lay in its disguises. That is, it was not only in the guise of Marxism-Leninism that the poison appeared, but also in all that was—to use Goebbels' list—pacifist, internationalist, anti-religious, un-German, un-Nordic, liberal-democratic, Darwinian. If anything consequential is left out of that list, one may add that Goebbels also reported that the poison was "hidden under the cloak of science and humanity."

Observe the extension of anti-Communist logic to foreign affairs under Hitler, and see how familiar the reasoning—even the words—appear. In November, 1936, the military alliance binding together Italy, Germany, and Japan was signed; it was this aggressive alliance that was, of course, to eventuate in World War II. But the alliance was called the Anti-Comintern Pact, and its avowed aim was to defeat "the Communist world conspiracy." Ribbentrop explained: "Japan will never permit any dissemination of Bolshevism in the Far East. Germany is creating a bulwark against this pestilence in Central Europe. Finally, Italy, as the Duce informs the world, will hoist the anti-Bolshevist banner in the south."

As he speaks the Spanish Civil War is raging. The interference by nazi Germany is notorious; this act, plus Mussolini's intervention, and the refusal by the Western democracies—paralyzed by the "Communist menace"—to assist the legitimate and recognized government is strangling the Spanish Republic. In March, 1937, the U. S. Ambassador to Germany, William E. Dodd, confers with Baron von Neurath, German Minister for Foreign Affairs, and asks about the Spanish situation. In *Ambassador Dodd's Diary** is the result. The Baron bluntly said:

> "We shall never allow the present government of Spain to win the civil war. It is Communism and we shall never allow that in any European state." That contradicted the peace idea with which he began the conversation. I said: Do you feel that no other nation has a right to govern itself, even foolishly? He

* Published by Harcourt, Brace, N. Y., 1941; the quoted matter is from p. 389.

> said: "No, not when it involves Communism.". . . These Germans, even those who are considered liberal, seem to me never to think about the rights of smaller nations.

Quite apart from the fact that Baron von Neurath was wrong in calling the Spanish Republic a Communist government, in what way does the substance of the statement of the nazi Foreign Minister made on March 4, 1937, differ from the substance of the statement on Cuba made by the President of the United States on April 20, 1961? Of course, the President is not a nazi and not a fascist; but the point is that the logic of the position of anti-Communism, the logic of viewing Marxism as one huge world conspiracy involving a fearful madness or a deadly poison, forces from the mouth of the President a position which is indistinguishable, in substance, from the position taken twenty-five years ago by the Foreign Minister of Hitler Germany.

CHAPTER X

The Soviet Union: McCarran Mythology and Actual Reality

Socialism is, of course, no longer only a theory; it is the guiding reality in one-third the world. And, indeed, in additional areas of the world, the commitment to the building of socialism is made explicit as in India, Indonesia, Ghana, and Guinea.

The Smith-McCarran approach to socialism in theory and in reality is that the former is systematic madness and the latter is institutionalized Hell. Let us, briefly, see whether or not there are any reasons to doubt the authenticity of the view of socialism in practice which the Smith-McCarran doctrine makes compulsory.

"Communism," said Hitler, "is the most frightful barbarism of all times."

On the basis of this estimate—held, in varying degrees of intensity—at the capitals of all Western Powers, it was believed by the General Staffs of every one of those Powers that the kind of massive blow which Hitler directed at the Soviet Union in June, 1941—when he bestrode all Europe—would bring the USSR to its knees in six, eight, or twelve weeks. George E. Sokolsky—then, as now, a leading expert of the Smith-McCarran school—entitled one of his columns soon after Hitler's attack, "When Moscow Falls" and explained that for this "fall" "there need be no excuses and

no explanations"—Communist barbarism had left "the giant helpless and incapacitated." Martin Dies, Chairman of the House Un-American Activities Committee at the time, announced: "Hitler will be in control of Russia within thirty days."

The days became weeks, the weeks months, and the months years, and, apparently, the greatest miracle since biblical times was transpiring. These denizens of hell, these slaves to Communist autocracy, these backward and starving robots not only did what the rest of the peoples of Europe—under their governments—had shown themselves unable to do, that is they not only held out against Hitler, they began to push him and his enormous armies back and back and back.

"The Russian Revelation" an American newspaper (the *Boston Herald*, Sept. 7, 1941) was finally forced to call this, editorially. Of course, this was a "revelation"—given the nature of the American commercial press' coverage of the Russian Revolution, anything which began to expose the nature of that coverage would come as a revelation. Under-Secretary of State Sumner Welles confessed that official Washington in 1941 had been terribly misinformed about Russia. And, in his *The Time for Decision* (1944) he found:

"The achievements represented by the victorious struggle of the Soviet Union during the past two years have never been excelled by any other nation. They would not have been possible save through the efforts of a united and selflessly patriotic people."

Similarly, Professor Foster Rhea Dulles, of Ohio State University, thought it perfectly clear in his *The Road to Teheran* (1944) that, "The Russian people had shown themselves singleheartedly united behind Communist leadership in heroic, self-sacrificing defense of their homeland . . . here was striking proof that many of the ideas about the Soviet Union popularly held in this country had been founded on a total misconception of what was actually happening in Russia and of the sentiments of the Russian people."

Nothing like this "revelation" was permitted again to penetrate the bitterly anti-Soviet American press, until Sputnik forced a breach in the wall. Typical of the amazed response was this from Professor Urban Whitaker of San Francisco State College:

> In just forty years of the communist system, they [the Soviet peoples] have literally harnessed technology to a star and galloped clear off the globe! Tell this to the starving masses who are hungry for industrialization. Evidently communism does not stifle all that is creative. We are caught with our propaganda pants down preaching a story which the simple "beep beep" of Sputnik so eloquently denies.*

To what measure were these propaganda pants cut? By and large, they were cut in such a manner that most Americans first visiting the USSR "expect to find," wrote Professor Harold J. Berman of the Harvard Law School, "barbed wire in the streets and people walking around with their heads hanging and their bodies bent" (*The American Scholar,* Spring, 1958). Professor Berman went on to tell of an American correspondent in Moscow who described in a dispatch to his paper a May Day parade with the "people singing and dancing in the streets and enjoying themselves thoroughly." The editor of this paper, on the other hand, from his American office told his readers of "an embittered Russian people forced by their hated government to demonstrate in favor of a revolution which they did not want." When the correspondent remonstrated, and told his editor, "I was there—I saw it—they were not bitter, they were happy, they were having a good time," the editor replied in effect that the Russians may have appeared happy, "but that actually they could not have been happy, in view of the evils of the system under which they live."

It is this editor's ignorant response which the McCarran Act would make compulsory in the United States, but compelling belief in the unreal does not make it real; and such compulsion can lead to disaster for the United States. The fact is, as Walter Lippmann wrote in his column of June 10, 1958, "the growth of the Soviet economy has been amazing." The fact is, as Claude M. Fuess, formerly headmaster of Phillips Academy in Massachusetts, wrote, after personally examining the question: "The Russians

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* In *The Western Political Quarterly,* June, 1958, p. 202.

have realized for some years the necessity of guiding every child as far along the educational path as he is qualified to go, of identifying talent early and cultivating it to the utmost, of rewarding scholarship and research, and making teaching a reputable, dignified profession" (*The Saturday Review,* Feb. 1, 1958). The fact is, as Professor Jerome Wiesner of Massachusetts Institute of Technology reported, also after personal examination:

> [The Soviets] have a view of science as an integral part of their society. They are pioneers. To the intellectual, the frontier is not the land, but the mind, and the Soviet leaders seem to understand this. Because they appreciate the long-term implications of the development of science for the growth of their society, they are able to make determined, long-range commitments to train people, build universities, laboratories, and institutes on a grand scale.*

The fact is, as Mrs. Franklin Delano Roosevelt reported, "the Soviet Union is particularly concerned about its babies and kindergarten children. There are nurseries for every child from two months old on, and excellent kindergartens" (*N. Y. Post,* Oct. 23, 1958).

The fact is, as Mr. Howard Taubman, critic for the *New York Times,* discovered:

> There is a genuine dedication to artistic ideals in the Soviet Union. There is a pervasive love of beauty. There is an exhilaration in the skill and virtuosity of highly trained performers. There is respect for the creative vocation. The people are being taught unremittingly to take pride in art as in learning. . . . To be cultured is regarded as one of the highest goods (July 3, 1958).

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* This appears in a paper by Professor Wiesner in *Soviet Progress and American Enterprise* (N. Y., 1958, Doubleday).

One could go one for many many pages bringing forward similar testimony,* and this comes only from Americans, and from Americans who by most standards—although not the standards of the McCarran Act—would not be considered "subversives." Of course, there is contrary testimony, and certainly the reality is that the Soviet Union is not heaven; but neither is it hell, and neither is it anything like what the McCarran Act mentality holds it to be. But it is the latter view which we are at the point of having frozen as the official and the only legally and loyally tenable view of a country making up one-sixth of the world. This view is contrary to the truth; freezing it into the required view will freeze the Cold War and may help eventuate in World War III. Certainly it is a false view that can be insisted upon only by those who reject the possibility of peaceful coexistence; to institutionalize it by law can only mean to seek to make the unreal real by fiat in order to prepare for a violent crusade against, in Hitler's words, "the most frightful barbarism of all times."

President Sukarno of Indonesia was a guest in 1956 of President Eisenhower and when here he addressed the Congress. More recently, in June, 1961, he was the guest of the Soviet Union, and while there he addressed dignitaries of that land. The President of this Republic of over ninety million people, hailing his country's warm friendship with the USSR, spoke of the splendid cities and industries that he had seen there, but the main thing, according to him, was "the wealth of your souls." He went on: "We believe that a people possessing such a spirit cannot be subjugated and will remain standing eternally like a hero." The point is not agreement or disagreement with this speaker; the point is that this is the President of one of the great nations in the world, and one which is not part of the Socialist bloc. That is the condition of the world as it is today. It is simply idiotic in the face of that indubitable reality to try to conduct the internal and the external affairs of the United States of America in terms of the Smith-

* See the present writer's *Since Sputnik: How Americans View the Soviet Union* (N. Y., 1959, New Century). See also, *The Trade Union Situation in the U.S.S.R., Report of a Mission from the International Labour Office* (Geneva, 1960).

McCarran image. In this sense, it is a matter of the most direct and the highest patriotism to do all in one's power to repeal the Smith and McCarran Acts and, pending such repeal, to stop witch-hunts and persecutions and prosecutions under the terms of those medieval monstrosities.

CHAPTER XI

Marxism and Violence, Alien Conspiracy, and Democracy

The substance of the accusations against the Communist Party and against Marxism-Leninism in the Smith-McCarran Acts amounts to charges of its being an alien conspiracy, and committed to the use of force and violence in the overthrow of democratic governments—such as that of the United States. We have shown, in the preceding pages, that the Government itself in the McCarran Board proceedings was not able to substantiate these charges; in the Smith Act cases, where conspiracy to advocate was the charge—there was no charge of any act at all—convictions were obtained early in the witch-hunting program, but even here and even with so deliberately attenuated a charge, the Government itself began to run into difficulties and suffer more reversals than victories from the Courts.

In the Smith Act membership cases, the Government has tried very few; has suffered some reversals; and, in any case, the type of proof offered—complete with sharpened pencils as instruments threatening the stability of the Government, and the type of witnesses—paid Government informers and spies, planted for purposes of future testimony—makes it possible to say that no conviction for anything resembling the real nature of the charge has been obtained by the Government. The truth of this is reinforced

when one bears in mind that for Courts to uphold what convictions have been obtained, they have had to repudiate not only the unequivocal prohibitions in the First Amendment but also the delimitation of that Amendment as put forth in the "clear and present danger" concept. The tests of immediacy and incitement have been watered down so much as to be almost meaningless now, at least in so far as the kinds of decisions forthcoming from Justice Frankfurter and Justice Harlan are concerned.

Nevertheless, quite apart from legal failures or successes, let us briefly examine the character of each of these charges. Probably the single most common stereotype in connection with revolution in general and with Marxism-Leninism in particular is to equate it with violence; in fact, the Government's position is that Marxism-Leninism *means* essentially the advocacy of force and violence for the overthrow of "free enterprise" social orders.

When the Communist Party points out that its Constitution specifically repudiates any idea or advocacy of the use of force and violence against the U.S. Government and provides for the expulsion of any member advocating such ideas or such action this is dismissed as "Aesopian" or self-serving by the Government. When the Party points to the fact that it has several times in the past actually expelled people from the Party for such advocacy and/or provocation—including police agents planted in the Party—this also has been dismissed as "self-serving" and mere camouflage.

The fact is that equating violence with the nature and process of revolution is itself incorrect. Violence may or may not appear in such a process, and its presence or absence is not a determining feature of the definition. How, then, should one view the relationship of violence to revolution?

First, there is the historical view, the view conveyed in Marx' well-known observation that "force is the midwife of every old society which is pregnant with the new." This observation, however, is not advocacy; it is observation. It is taking account of the fact—certainly a fact when Marx was writing—that hitherto social changes sufficiently fundamental to be called revolutions had not occurred peacefully. It is, also, an observation which rules out the adoption of pacifism as an ideology suitable for a revolutionary,

but it most certainly does not constitute the advocacy of violence for the revolutionary himself.

Sometimes people fall into the error of thinking that one must be either a pacifist or a flaming advocate of terror and violence, à la Hollywood's version of a "revolutionary." There are not, however, only these two alternatives, and most people are neither pacifists nor terrorists. Most people, certainly in the United States, adhere to the position set forth in the Declaration of Independence and in the Constitutions of many States in our Union. That position is summed up in Jefferson's favorite motto—"Resistance to tyranny is obedience to God." And here tyranny certainly manifests itself—as did the British Crown during our Revolution—through the employment of forcible repression and institutionalized violence and terror against an entire population. The position of the Declaration of Independence on the question of force and violence and revolutionary process is the position taken by Marxism-Leninism; this is argued very persuasively by John Somerville, professor of philosophy at Hunter College in New York City, in his book—*The Communist Trials and the American Tradition* (N. Y., 1956) — and in making this point, Professor Somerville is correct.

This needs to be added: when one examines the full content of the Marxian view concerning the historic relationship between the revolutionary process and the use of violence, he finds that it is insisted that where violence has accompanied revolutionary culmination it has appeared because the old class, facing elimination due to social development, has chosen to try to postpone its interment by resorting to the violent suppression of the challenging classes and forces. The source of the violence, when it appears, is in reaction; it is in response to that challenge that resistance may be offered and if such resistance is successful then the revolutionary process may come to fruition.

Since the source of violence rests with reaction, whether or not it will appear depends not so much upon the will to use it but rather upon the capacity to use it. This is why, in the history of Marxism-Leninism, there have been differing evaluations, at different times, as to the possibilities of the peaceful or relatively peaceful transition

to Socialism. In the latter part of the 19th century both Marx and Engels thought this might be possible in the United States, Great Britain, and Holland, largely because of the well-developed bourgeois-democratic systems prevailing there and the relative absence, then, of highly concentrated military establishments. With significant shifts in the situation, such estimates altered, as when, during World War I—and its intense militarization—Lenin asserted that peaceful transition was impossible. But it is to be noted that this was an estimate arising out of a consideration of the strength of reaction and its readiness to use violence. When this same Lenin thought he saw, in April, 1917, a profound decay in the strength of reaction in Russia, he projected the possibility then, in Russia, of the advance peacefully to Socialism.

It is relevant to observe that the Communist Parties of Portugal and Spain, in recent policy declarations, affirmed that they saw the possibility in their countries of the peaceful transition to Socialism—and this in countries where fascism rules. The estimate is based on the relationship of forces in the world and in Europe today; on the very precarious hold that Franco still has upon power in Spain, the developing force of public opinion and anti-fascist organization in Portugal and the disintegration of her colonial empire. Here, again, the opinion is based upon an estimate of the power of reaction to resort, effectively, to force in order to prevent its own replacement.

Violence is not an organic part of the definition of the process of revolution; the conventional presentation which equates violence with revolution is false. The view which places the onus for the appearance of violence in connection with basic social change (if it does appear) upon the advocates of such change is altogether wrong. Where violence does accompany revolutionary transformation, it owes its origin and takes its impulse from the forces of reaction which seek to drown the future in blood.

Most certainly, genuine revolutionists of the 20th century are not advocates of force and violence; they are advocates of fundamental social change, often faced—as in South Korea and Paraguay—with the organized and systematized force and violence of the supporters of outmoded and criminal social systems.

Next to that stereotype which identifies revolution with violence, none is more widespread than that which places revolution as antithetical to democracy. One hears frequently the question of social change posed as being between two alternatives—either the democratic or the revolutionary—with the clear inference that the two are mutually exclusive. The idea of revolution as being opposed to democracy carries with it also the view of the revolutionary process as being conspiratorial and—often—alien inspired.

If the widest popular participation, at its most intense level, be basic to the meaning of democracy—and I think it is—then the whole revolutionary process and culmination, far from being contrary to democracy, represents its quintessence. And the more fundamental the nature of the revolutionary process, the more democratic it will be, the more irrelevant will be conspiracy, the more indigenous will be its roots, and the more necessary will be the deepest involvement of the vast majority of the population.

It is counter-revolution which is anti-democratic and therefore conspiratorial in character. Counter-revolution, hostile to the interests of the vast majority, contemptuous of that majority, eliteist and exploitative, finds it necessary to operate by stealth, through deliberate deception, and with dependence upon the precipitation of violence. Prime examples in our own era are the Franco rape of Spain, and the CIA-engineered overthrowals of the Mossadegh government in Iran and of the Arbenz government in Guatemala, and the attempted CIA overthrow of the Castro government in Cuba. These are examples of truly unpopular and therefore secretive and conspiratorial—and foreign-based—governmental changes or attempted changes; these are counter-revolutionary, not revolutionary.

The ruling-class charge of "conspiratorial" hurled against revolutionary movements has the obvious inspiration of serving to condemn such movements and as a pretext for efforts to illegalize them and to persecute their advocates and adherents. Communism is not a conspiracy and Communists are not conspirators. From Engels' *Principles of Communism,* written in 1847, where one reads: "Communists know only too well that all conspiracies are not only useless but even harmful," to Lenin's *Tasks of Russian Social Democrats,* written fifty years later, where Lenin said of

himself and his comrades, "They do not believe in conspiracies; they think that the period of conspiracies has long passed away," to Dimitrov's denial of the same slander at the Reichstag-fire trial, to Eugene Dennis' denial of it at the first Foley Square trial, to Elizabeth Gurley Flynn's denial of it at the second Foley Square trial (both of the latter under the conspiracy section of the Smith Act), Communists have always opposed and continue to oppose conspiracy.

Professor Zechariah Chafee, Jr., in his standard work, *Freedom of Speech in the United States,* wrote: *"No one can soberly contend that the Communist Party is a conspiracy."* From the days of the Inquisition, to the Salem witch-hunts, to the Sedition Act persecutions in the United States in 1798, to the Reichstag trial, to the Smith and McCarran Acts, sobriety has never characterized the effort to suppress basic and radical challenges. Being unable to refute, rulers condemn, and the classical tactic of condemnation is to label challengers as conspirators.

The ruling-class charge of anti-democratic hurled against Marxism and Communists reflects the demagogic use of the deep democratic traditions of our land and the persistent hold those traditions have upon many millions of our compatriots. The concept of democracy is born of revolution; and not least, in this connection, is our own American Revolution. In the 18th century, the American word "Congress" reverberated through the palaces of the world with the same impact with which, in the 20th century, the Russian word "Soviet" reverberated through the mansions of the world; and the word "citizen" connoted very much the same partisanship on the side of the sovereignty of the people that the word "comrade" does today.

In our time, when the fullest implementation, in every aspect, of popular sovereignty is on the historical agenda, the democratic and anti-conspiratorial character of the revolutionary process is especially clear. This is why Engels, back in 1895, in an introduction to Marx's *The Class Struggle in France,* was able to write:

> The time of surprise attacks, of revolutions carried through by small conscious minorities at the head of unconscious

> masses, is past. Where it is a question of a complete transformation of the social organization, the masses themselves must also be in it, must themselves have grasped what is at stake, what they are going in for with body and soul. The history of the past fifty years has taught us that.

I think the history of the years since has further confirmed this view; at any rate and certainly, it is the view of Marxism-Leninism; as Lenin insisted and emphasized: "We are not Blanquists, we are not in favor of the seizure of power by a minority" (*A Dual Power*).

A usual adornment to ruling-class propaganda about the anti-democratic and conspiratorial character of revolutionary movements is to insist that they are, also, alien-inspired, or in fact, treasonous. This is a fundamental charge against the Communist Party under the McCarran Act, and it always has been reaction's special canard against Marxism-Leninism. Here are the words of Hitler: "The Communist Party is a section of a political movement which has its headquarters abroad and is directed from abroad. . . . We look on Communism as a world peril for which there must be no toleration." This is precisely the view and the position of the McCarran Act.

The basic source for all such charges is the ruling class' rationalization for their own domination. Such classes always insist that the orders they dominate are idyllic and that nothing but devotion and contentment characterize the people fortunate enough to live under their control.

Hence, where significant revolutionary ideas or movements do appear, they must reflect not fundamental injustices and contradictions within the system, but rather the nefarious machinations of distempered individuals or of agents of a hostile foreign power. That is, the source of the unrest or criticism may be anywhere—in the blandishments of the devil, the influence of the notorious Declaration of Independence or the U.S. Constitution, or the Communist Manifesto, or the Garrisonian sheet published in Boston and called, provocatively enough, *The Liberator,* or the Paris Commune, or the anti-American schemings of Queen Victoria, or

the Bavarian Illuminati, or the Protocols of Zion, or the Kremlin—but it cannot be within the social order challenged by the unrest. For, obviously, if it were there, this would question the basic conceptions of their own order so far as those dominating it are concerned, and would tend to justify the proposals for or efforts at change.

This kind of thinking, furthermore, is natural for exploitative ruling classes since their inherent eliteism makes them contemptuous of the masses of people. They, therefore, tend to see them as sodden robots, or unruly children, or slumbering beasts, and feel that they may be goaded into fits of temper, or duped into displays of savagery, but that no other sources for their own expressions of their own needs and aims are possible. In any case, with the paternalism characteristic of eliteism—especially if, as in the United States, there is considerable racism, too—exploitative ruling classes tend to be certain that they know what is best for their own "people."

Hence, when American Communists are labeled "foreign agents" they have been placed within very select company, including Thomas Jefferson, Thomas Paine, William Lloyd Garrison, Frederick Douglass, Robert M. LaFollette and W. E. B. Du Bois. The labeling was wrong and malicious in the past; it is wrong and malicious today.

Marxism-Leninism, defining revolution in the manner already indicated, insists that it cannot be exported. It believes, as Engels wrote in 1882—and Lenin quoted him with deep approval in 1916—that, "The victorious proletariat can force no blessings of any kind upon any foreign nation without undermining its own victory by so doing." This in no way negates or contradicts the international quality of Marxism; those who find it the most effective philosophy are by no means confined to one country or one continent. On the contrary, its truths and its insights are universal. This, however, is true of any idea worth its salt; and the more worthy the idea, the wider its appeal and the more likely will its appeal transcend national boundaries.

There is no better illustration of this truth than our own Declaration of Independence. It was, as its author stated, made up

of the thoughts of all progressive mankind at the time, and its ideas may be traced back to Italian, Greek, Swiss, French, English, Irish revolutionists and thinkers. This certainly does not make the Declaration any the less American, just as the fact that it has served to inspire men and women of every nationality ever since it was first blazoned forth does not dilute it of its peculiarly American quality. Marxism-Leninism owes most, in its conception and development, to German and Russian thinkers, but it drew upon the thinking of all mankind through all history; it has been tested by mankind for over a century everywhere on the globe; and contributions to it have been made by people of every nationality, including Americans, who were attracted to it over one hundred years ago.

When Socialism comes to the United States, it will come and can come only because the overwhelming majority of American people want it and want it so passionately that it can no longer be kept from them. In no other way can Socialism come to this land. That is a fundamental commitment and principle of the Communist Party of the United States; hence, the charge of foreign agency made against this Party is a lie.

CHAPTER XII

The Right Danger and the Anti-Communist Deception

Laws like the Smith and McCarran Acts spring from the desires and pressures of the extreme Right; their passage encourages that Right. And decisions such as those of June 5, upholding the constitutionality of certain sections of both laws, further embolden that Right. The suppression of Communists and efforts at terrorizing the entire Left and intimidating all democratic opinion are part of the pattern of fascist revival; the other side of this coin is the actual formation and growth of organized Right tendencies and movements.

It is worth recalling that the first use of a Senate Investigating Committee in American history for purposes of inquiring into radicalism occurred in 1859-60. At that time a Senate Committee was delving into the administration of the Post Office to see whether or not it was too cooperative in distributing Abolitionist literature; it also was seeking to demonstrate that the newly-founded Republican Party was really a "front" for these seditious Abolitionists. The Committee—with their friendly witnesses, such as a renegade Abolitionist named Realf—were able to find what they had determined before they met, and did indeed label the new party as a greater menace to the stability of the Republic than the Abolitionists themselves. It is of more than antiquarian interest to note that the two leading members of that one hundred percent-loyal

Senatorial investigating committee were Jefferson Davis of Mississippi and James Mason of Virginia, both of whom within a year were to be leading figures in the only major attack by force and violence against the United States Government ever undertaken from within—and in their effort, they were to place decisive reliance upon the hoped-for and sought-for assistance of such foreign powers as Great Britain and France.

Today in the United States one has clear and alarming evidence of a major resurgence of an extreme Right. Ideologically this has displayed itself for some years now in the appearance of the "New Conservatism"; politically and organizationally it shows itself in the capture of much of the Republican Party by the Mundt-Goldwater-Nixon wing, the unity of this wing with the powerful Dixiecrat group in the Democratic Party, the intensification of that wing's terroristic and illegal practices, the politicizing of Big Brass in all the armed forces, the creation of neo-fascistic and extreme Right associations—as Rockwell's nazis and the Birch Society—and the sponsorship of all such moves by many Big Businessmen, especially those hitherto prominently connected with the National Association of Manufacturers and the U.S. Chamber of Commerce.

The whole structure of the U.S. Government, too, especially since the start of the Cold War, has reflected a diminution in democratic control. The power of the military has grown; the direct role of multi-millionaires in government has risen; secrecy in government has mounted to the point of arousing widespread concern; and such institutions as the FBI, the CIA, the Pentagon, the Atomic Energy Commission and the National Security Council have replaced elected and constitutionally protected organs of Government as the real loci of power.

Generals, Admirals, colonels and naval captains in great numbers are actively participating in the "anti-Communist" campaigns of such notoriously reactionary groups as the Birch Society and the National Educational Program of Searcy, Arkansas, the latter connected with Harding College in that city, and the College itself operated by the Church of Christ, a hard-ribbed, fundamentalist sect, especially strong in the South. Personalities known to be involved include General Edwin A. Walker, until recently a

division commander in West Germany, General William P. Campbell, former assistant chief of finance for the Army, General A. C. O'Hara, Governor Rockefeller's chief of staff, General E. M. Almond, in command of the Alabama National Guard, General S. L. Lowry of the Florida National Guard, and three Texan Generals—T. F. Wessels, W. G. Weaver, and W. L. Lee. General Charles B. Stone III, who succeeded General Chennault as commander of the 14th Air Force in China, and Colonel L. E. Bunker, former personal aide to General MacArthur, are prominent and open supporters of the Birch Society. Other generals who have associated themselves publicly and enthusiastically with the extreme Right include: Major General William C. Bullock, commanding the XIX Army Reserve Corps covering parts of the Southwest, Lieutenant General Ridgely Gaither, commanding the Second U.S. Army, and Major General Ralph C. Cooper, commanding the XXI U.S. Army Corps.

From the naval side, Vice Admiral Robert Goldthwaite, of the Air Training Command, Real Admiral W. G. Schindler of the New Orleans Naval District, Captain K. J. Sanger of the Seattle Naval Station, and Captain Isaiah Hampton of the Glenview Naval Air Station, near Chicago, all have identified themselves in the most active manner with the National Educational Program and the Birch Society propaganda.

Over sixty Representatives and Senators are on record as sympathetic to the ideas and aims of such organizations. Very recently, these honorable ones joined to send greetings to the annual meeting of the Sudeten German Association, held in West Germany on May 19, 1961, an association representing the extreme Right in Adenauer's Germany, and one especially anxious to "retake" the lands Hitler had taken from Czechoslovakia just before World War II. Representative Gubser (R., Cal.) wired the meeting: "I think that the spirit animating the Sudeten German Day is the greatest hope for the free world." Representative Matthews (D., Fla.) told the neo-nazis: "Our beloved nation stands by in your struggle for your former homeland one hundred percent." Senators wiring greetings included Barry Goldwater, Herman E. Talmadge, Karl E. Mundt (with McCarran, the chief author of the McCarran

Law), Thomas J. Dodd, Thruston B. Morton (Chairman of the Republican National Committee) and several others. Four Representatives were so ardent in their support of these *revanchists* that they personally attended their meetings (who paid the fare?); included in these four was Representative Gordon H. Scherer of Ohio, a leading member of the House Un-American Activities Committee. Mr. Scherer assured the assemblage: "We have a common goal . . . anti-Communist organizations like yours and those in the United States should get more money."*

Of course, their desire for money is insatiable; Hitler was financed by Thyssen and Krupp and such bankers as Mannesmann, but he was always shouting for more money—and generally got it. Back in 1949, the so-called National Educational Program in Arkansas really was able to activize itself on the basis of a gift of $300,000 from Alfred P. Sloan, the late President of General Motors. The founder of the Birch Society himself is a millionaire, of course; in that society are Cola G. Parker, former President of the National Association of Manufacturers, F. Gano Chance, another former President, William J. Grede, another former President, Martin J. Connor III, a former Vice-President, E. G. Swigert, a former President. Robert Welch, himself, the founder, was formerly a Vice-President of the N.A.M. Officials of General Motors, major southern textile mills, several insurance trusts, paper and power magnates are supporters of the Birch movement and important sources of its revenue.

Clearly encouraged—if not directly inspired—by the June 5 decision upholding the requirement of the McCarran Act that the Communist Party register the names and addresses of all its members—for placing on a list to be available to the public at all times—the Birch Society issued instructions to its (claimed) membership of 60,000 to compile "the most complete and most accurate

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* For the military-naval support of the extreme Right see, for example, the article by Lawrence Emery in *The National Guardian,* June 19, 1961; for the details on the Sudeten German meeting, see *The Nation,* July 15, 1961, p. 22. For the Birch Society see the recent pamphlet by Mike Newberry, *The Fascist Revival* (N. Y., 1961, New Century Publishers).

files in America on the leading Comsymps, Socialists and liberals." This list, the instructions add, are to include "the background, connections and activities of all the leading liberals." Since the FBI, the Senate Internal Security Commitee and the House Un-American Activities Committee already have lists of such citizens which admittedly number in the several millions, it is difficult to believe that the 60,000 (?) Birchites will be able to surpass that. Still, it is likely that the FBI list does not (yet) include President Eisenhower and his brother Milton, so that no doubt the Birch list will represent something of an "improvement." Perhaps the main purpose is to encourage a vigilante spirit.

The pattern of reportage on these developments and events fits into the whole ruling-class bias favoring them. Even when outright sabotage actually was committed, and a whole boat-load of ammunition for *der Tag* was discovered in the possession of the saboteurs—who had blown up communication towers in the West—the press tried to hide the Birchite sympathies of the wealthy building contractor implicated, and within 24 hours lost interest in the whole story.

The *Wall Street Journal* (June 7, 1961), giving its warm approval to the June 5 decisions of the Supreme Court, noted its feeling that the actual crime of which Communists were guilty was "treason," that a spade should be called a spade and that—the inference was clear—the punishment should fit the "crime," and everyone knows that treason is a capital offense. The *Journal* added that the seriousness was compounded in the case of the Communists, for, unlike the Rockwell group of nazis, in the Communists one did not have "some screwball" group which, in any case, had "no foreign base."

The *New York Times* (July 14, 1961), while critically noting the compiling of a "list of liberals" by the Birch Society, queries: "What kind of nonsense is this?" And its final sentence is: "Let the Birchers have their little list; it—and they—should be taken as seriously as Ko-Ko."

But this is no comic-opera *Mikado;* this is a group with a fascist mentality and program, enlisting several thousands, and comprising among its supporters—as we have shown—many top figures in

American business, government and military circles. This kind of response makes one think of the response from dominant organs of opinion in the United States to the rise to power of the Nazis in Germany, and specifically, for example, to their night of book-burning in 1933. The *New York Times* correspondent in Berlin said this latter event "savored strongly of the childish." He wrote, too, of "the ripples of amusement that went through the world over the first flush of student enthusiasm." The *Saturday Review of Literature* commented that the book-burnings were "an absurd performance," while Walter Lippmann concluded: "In the long history of a people they [that is, such events as the book-burnings] are the mood of a moment, a mood of world despair brought to its peak by the intense agitation of the revolution through which Germany is passing."

The burning of the books was not childish and not the mood of a moment and not expressive of a revolution. The burning of the books, as the World Committee for the Victims of German Fascism correctly pointed out at the time, blazoned forth the fact that the nazis intended "not only to extirpate physically the most courageous and self-sacrificing anti-fascists, but also to destroy everything of any vitality and worth and even anything that was at all progressive."

With hindsight, we know now that the Anti-Fascist Committee spoke the awful truth; shall we not take advantage of past experiences? Shall we not learn the lessons of that past—taught at the cost of scores of millions of lives? The Birch Society and its supporters—and this includes the actual concocters of the Smith and McCarran Acts—aim at "anything that is at all progressive." The Smith and McCarran Acts tend to legalize Birchism; their enforcement will make the standards of that society the required standards of American life. It will make an America into the image of the Ku Klux Klan and the former Black Legion of Detroit. All who do not want such an America—if reached with the truth—would unite to undo the decisions of June 5th and to repeal both the Smith and the McCarran laws.

CHAPTER XIII

For Democracy's Defense

The passage of the Smith and McCarran Acts represented heavy blows against democracy in the United States. The enforcement of the conspiracy section of the Smith Act, for the past dozen years, has further invigorated the Right. The June 5th decisions represent additional powerful encouragement to reaction. Their implementation will threaten most seriously the whole democratic structure of our government; it will represent a major step over the threshold of liberal-parliamentary government into the zone of fascist-like tyranny.

The decisive point of the struggle now in the United States against reaction at home and cold-war aggressiveness abroad is the battle against the June 5th decisions. That battle must be won, and it can be won.

It is a fact that the opposition against both the Smith and McCarran Laws has been of tremendous scope. On the basis of this background, and of the manifestly dangerous and terribly unjust—not to say completely unfair—nature of the laws and their requirements, it should be possible to build a united front against them that will be irresistible. The historic task of forging real unity of all democratic elements in our country can be accomplished on the basis of defeating June 5th, for it is impossible to see how anyone can think of himself as democratic in any shape or form, and not find himself unequivocally opposed to Smith-McCarran and their implementation.

With that unity of labor, progressive and democratic forces, it will be possible to check the present drift of the Kennedy Administration to the right and pressure it to fulfill its promises to that component of the American people whose votes created that administration—the trade union membership, the Negro people, the Jewish masses, the particularly disadvantaged and exploited. In achieving this unity, the more conscious and organized Left have a great task. Unity of the Left forces can serve to give greater clarity, determination, and cohesion to wider masses. This is the historic role of the class-conscious forces, which they are once again called on to fulfill, in the interests of peace, democracy, and social progress. No differences of political or ideological nature should stand in the way of such united action. The political die is far from cast in the United States. The 1960 elections represented, by and large, a rejection of the Nixon-Dulles line at home and abroad; struggle is required to put into life the mandate of that vote. It can be done, and in the apparent victory of the Right in the June 5th decisions there is present a decisive boomerang, which can turn about and deal a smashing blow to the forces which hurled the object.

It is important to recall that the President of the United States himself, at the time the McCarran Act was passed over his veto, denounced it as making a mockery of the Bill of Rights and as challenging every democratic right and tradition of the United States. The then leading authority on constitutional liberties, the late Professor Zechariah Chafee, Jr., excoriated the McCarran Act as representing an unprecedented danger to American liberties and as one which, in its attack, "goes far beyond Communists." Representations were made to Congress in 1949 and 1950 in opposition to the McCarran Bill by every significant mass organization in the country. Included were: the American Federation of Labor, the Congress of Industrial Organizations, the National Association for the Advancement of Colored People, the Railroad Brotherhoods, the American Jewish Congress, the National Farmers Union, the American Civil Liberties Union, the Women's International League for Peace and Freedom, the Americans for Democratic Action, the Jewish War Veterans, the National Lawyers Guild, the National

Council of Jewish Women, the Baptist Youth Conference, the Youth Group of the Methodist Episcopal Church, the Methodist Federation for Social Action, the Liberal Party of New York, the Union of Hebrew Congregations, the Junior Hadassah, the Baptist Ministers Conference, the National Association of Colored Women, and still other groups. Philip Murray, in the *C.I.O. News,* August 21, 1950, stated that the McCarran Bill constituted "a definite threat to bona fide labor organizations"; the Amalgamated Clothing Workers, through its paper, *Advance,* described the same Bill as "a severe blow at civil liberties—the freedom of speech, of thought, of assembly, as all Americans are guaranteed by the Constitution." The Amalgamated Meat Cutters & Butcher Workmen (A.F.L.) said that if the McCarran Bill was enacted, "sooner or later an effort would be made to outlaw the trade-union movement."

The *Colorado Advocate,* organ of the Colorado State Federation of Labor, said at the time the McCarran Act was passed that it was one of a series of repressive measures; it compared each "to a little gate . . . down the path toward complete outlawing of all dissent." It concluded: "Let's hope that some day soon a floodtide of revulsion against the present drift will burst back through the little iron gates and restore this country to the path of sanity and freedom."

The time is now; it is already late, but it still can be done. As the passage of the laws evoked wholesale public condemnation, so the June 5th decisions have brought very considerable adverse comment from important organs throughout the nation. Typical of such opinion was the editorial in *The Christian Century* (June 21, 1961), the leading lay organ of Protestant opinion in the country. The decisions, said this editorial, "can do incalculable damage to broad areas of American freedom." It saw both the First and the Fifth Amendments "seriously weakened" and stated that, *"On the basis of such decisions Thomas Jefferson would have gone to jail."* Two days later, *The Commonweal,* leading organ of liberal Catholic opinion in the country, expressed fear "that these decisions have weakened" safeguards of civil liberties; it found "the reasoning of the minority opinion more persuasive and more

urgent than that of the majority." Similar opinions have come from the *Boston Herald,* the *New York Post,* the *Nation,* the *New Republic,* the *Pittsburgh Post Gazette,* the *Minneapolis Tribune,* the *New York Times.*

Abroad, from the Socialist nations—one-third of mankind—and from the Communist and Socialist press in other countries (and it is only outright fascist countries, or the neo-nazi regime of Adenauer which bans such a press) there have come the most dire warnings drawn from their own anti-fascist experiences and the most uncompromising denunciations of the Acts and the decisions. Additionally, opinion far from the Left, in the rest of the world, has been very critical of these decisions. In England, for example, the *London Observer* and the *London Express* have both taken hostile views. The *Observer,* in its editorial of June 6th, entitled "Backward Step," feared that "The result of these decisions will be to encourage the spirit of McCarthy." The *London Times,* in its featured news story from Washington on the day of the decisions, clearly indicated that it regretted the turn they had taken. In its editorial of June 12, the *Times* made quite explicit its chagrin that the Court's majority had ruled as it did. The *Times* observed that the Acts had been passed many years before and that it bordered on the absurd to undertake their full enforcement now. That the U.S. Government had announced its intention of doing that seemed to this most influential British paper "a pity." It found the fears of Communism in the United States to be "one of the sadder, and sometimes more ludicrous aspects of American life." It ended by commenting that a hopeful note in the Kennedy Administration seemed to be that it was "recruiting new ideas"—including in its avowed opposition to Communism—but that these decisions seemed to represent a reversion to a better-forgotten past.

Here, as clearly as possible for a British paper commenting on American internal affairs and known as the unofficial voice of the Macmillan Government, one was finding reference to the embarrassment diplomatically that the Acts and their enforcement would bring to the United States' attempted stance, in world affairs, as the defender of freedom.

Tom Driberg, a leader of the Labour Party, in his column in *Reynolds News* (June 18), a paper with fewer inhibitions than the *Times,* attacks the decisions as nothing short of disastrous. After summarizing for his readers some of the main provisions of the McCarran Act, Driberg writes:

> It is not anti-American, but pro-American, to think it tragic that America—the land of Jefferson and Lincoln, our main ally, the leading nation of the "free world" and tutor in democracy to the uncommitted peoples—should gag American dissenters.

An even sharper reference to the conflict between United States pretensions—and especially those of the Kennedy Administration—and the June 5th decisions, came from certain Negro organs of opinion. Notable was the editorial in a leading Negro newspaper of the Pacific Coast, the *Los Angeles Herald Dispatch* (June 24). Here is the heart of that paper's comment:

> The McCarran and Smith Acts, devised in the main by Southern racists in Congress, were designed to encompass the destruction of the American Communist Party while maintaining the fiction of the dedication of the United States to freedom and democracy, for fear of alerting the American people to the threat inherent in these laws to their Constitutional liberties. . . .
>
> The *Herald Dispatch* considers it its duty to sound the alarm to our readers and the Afroamerican people in general to protest the Supreme Court's decision upholding the McCarran and Smith Acts. So long as these Acts stand on the statute books our struggle for human dignity and freedom will be handicapped and frustrated. No one who dares to support the liberation struggles of our African kinsmen, or oppose jimcrow oppression in our country, will be safe. Make your voice heard. This is it—it's now or never.

* * *

At times, the opinion is expressed: The law is the law, and the Supreme Court has ruled and that is all there is to it. What does

one say to this kind of thinking? There are several things one may say in reply.

There is, in the first place, the fact, as Eugene Dennis correctly pointed out in 1952, in one of his *Letters from Prison* (N. Y., 1956): "It is significant that very few so-called sedition or criminal syndicalist laws ever have been repealed outright in the United States, or declared invalid by the Supreme Court. But many of these laws that have remained on the statute books have been rendered inoperative and null and void."

Related to this—whether or not laws are enforced and how vigorously they are enforced—is the fact that when it comes to laws dealing with "political crimes," the whole matter of their passage and their implementation depends decisively upon political considerations.

This is why the Smith Act itself was on the books for almost a decade before it was first applied to Communist leaders; this is why at a certain period convictions under the Act were forthcoming as quickly as people could be brought to trial, and the Supreme Court upheld them without serious question (as in the *Dennis* case), and why at another period the Government found convictions more difficult to obtain and then found the Supreme Court very much more difficult to persuade (as in the *Yates* case). This is why, in general, one now faces the fact of people going to jail on the basis of an act passed twenty-one years ago, whose main rationalization was that it was combatting a pressing immediate danger! And why, with the same pretense, the Party is being ordered to register a full eleven years after Congress "found" the existence of this urgent and immediate and fearful threat.

There is also the instant fact, in the McCarran case, that the Court itself did grant a stay in the execution of its June 5th decision and that this is to be re-heard in the October term. The stay reflected domestic and international pressures, concern over the 5-4 vote and the remarkable vigor of the dissents, especially that from the Chief Justice. Further, already certain broadly-based organizations, as the American Civil Liberties Union, have made public their support of the Party's appeal and their opinion that

justice lay on the side of the Minority of Four rather than the Majority of Five.

Furthermore, in general, of course, Supreme Court decisions have been reversed through struggle many, many times in the past. If this had not been the case, there would be no minimum wage law, no prohibition of child labor, a completely and openly regressive taxation system, no regulation of corporations, no public power program, no federal assistance to agriculture, no unemployment insurance; if there had not been the fact of reversal of past Court decisions, we would still have slavery in the United States, and—overcoming that—we would still have the federal government formally on the side of segregation.

The revocable character of Supreme Court decisions is emphasized in the fact that dissenting opinions are written and published. This is not done as an archival act, or merely as a matter of professional pride. This is an important feature of the Justices' duty; and the dissents are written and published because it is believed that in the dissenting view, very possibly, lies the real truth and the better justice. In all the examples I have cited in the preceding paragraphs—from the judges who dissented in *Dred Scott* to those who dissented in *Plessy vs. Ferguson* (in the first the Court majority tried to make slavery perpetual; in the second the Court tried to make jimcrow perpetual)—the experience of the American people themselves has demonstrated that it was the minority and not the majority who best voiced their own and our country's best interests.

Concerning dissents in particular, Edmond Cahn, professor of law at New York University, has written in a very recent book:*

> Dissenting opinions are usually defended on the ground that they contribute to the long-term improvement of rules of law; actually, they do more. On many an important occasion they notify the legislative and executive branches and, above all, the press and general public that government officials are engaged in committing some immediate act of

* *The Predicament of Democratic Man* (N.Y., 1961, Macmillan), p. 86.

wrong. *Often it is the dissents that awaken, inform, and gird the public sense of injustice.* (Italics added.)

Here is the main point and the main hope—"the public sense of injustice"—and rarely was grosser injustice perpetrated than in the passage and enforcement of the Smith Act; this was equaled —probably surpassed—in the McCarran Act monstrosity and in its "registration" requirements—requiring people to swear that they are indeed spies and traitors! An attempt to enforce this latter law will be the grossest injustice ever committed through law since actual slavery was the law of this land. The latter injustice brought upon our nation its most severe trial and its most devastating experience; the former, if fully consummated, will threaten the whole conception of our country—"this nation, conceived in liberty"—and may plunge it into a course whose outcome will be altogether catastrophic.

Back in 1794, the first radical societies created in our Republic —the so-called Democratic Societies, from which emerged Jefferson's Democratic Party—were being attacked in Congress as subversive instruments of a hostile France. James Madison—Father of the Constitution and author of the Bill of Rights—defended these societies and their programs; it was in the course of this historic defense that James Madison put forth this fundamental truth: "If we advert to the nature of republican government, we shall find that the censorial power is in the hands of the people over the government, and not in the government over the people."

The facts and all the facts—the nature of the Smith and McCarran laws, the court proceedings, the charges made and the manner of their substantiation, what the Board found and what the Court found, what the dissenters made clear—if this, or a substantial portion of it, can be gotten to the American people, there can be no question that their verdict—and they are the Court of Final Resort—will be in favor of freedom, justice and just ordinary fair play.

Harvey O'Connor, the distinguished author, and Chairman of the Emergency Civil Liberties Committee, said of these Court decisions: "The forces of democracy and civil liberties in this

country have no choice but to work unceasingly for a reversal. To do so involves no love of communism, but rather a love of liberty and the free expression of opinion."

When, in 1920, the federal government went on a witch-hunting, repressive spree, twelve distinguished attorneys, including then the young Felix Frankfurter, warned that, "Free men cannot be driven . . . [they] respect justice and follow truth, but arbitrary power they will oppose until the end of time."

Mr. Justice Frankfurter appears to have forgotten his noble words; but the people have not, since they cannot. With the people these are not mere words, they constitute bread and dignity. Renegades and cowards, informers and deceivers must not be permitted to lead our nation to disaster.

The vedicts of the courts are not unalterable. They have been reversed before; they will be again if enough of us stand together, gain allies and then render the final judgment.

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In addition to having participated, as a witness, in a Sedition and in several Smith Act cases, and in the hearings before the Subversive Activities Control Board, and having used the texts of the majority and minority opinions in the cases involved, and examined the newspaper and magazine coverage of the questions, and the *Congressional Record* for relevant dates, the author wishes to acknowledge in particular his indebtedness to the following works:

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[The author also drew on certain of his earlier works, especially *History and Reality* (N. Y., 1955, Cameron Associates); references to additional studies germane to the present volume will be found there.]

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HERBERT APTHEKER was born in New York City in 1915. Since his first book, *The Negro in the Civil War,* was published in 1938, he has authored more than a dozen books and scores of pamphlets, among the best known being *American Negro Slave Revolts* (Columbia University Press, 1943), *To Be Free* (International Publishers, 1948), *A Documentary History of the Negro People in the United States* (Citadel Press, 1951), *History and Reality* (Cameron Associates, 1955), *Toward Negro Freedom* and *The Truth About Hungary* (New Century Publishers, 1956 and 1957), *The Colonial Era* and *The American Revolution: 1763-1783* (International Publishers, 1959 and 1960), and *The World of C. Wright Mills* (Marzani & Munsell, 1960).

Dr. Aptheker served in the field artillery for over four years in the Second World War, rising through the ranks from private to major. He was awarded a prize in history by the Association for the Study of Negro Life in 1939, and was a Guggenheim Fellow, 1946-47. He is presently the editor of *Political Affairs,* and on the editorial board of *Mainstream.* Dr. Aptheker's articles and reviews have appeared in most of the leading historical journals, including the *American Historical Review,* the *Political Science Quarterly,* the *Journal of Negro Education,* the *Journal of Negro History, Phylon,* and many more.

Aptheker's contributions have earned him a place as a consequential figure in the field of American scholarship.